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Collins Financial Services, Inc. and  
Nelson & Kennard

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DAVID TOURGEMAN,

Plaintiff,

vs.

COLLINS FINANCIAL SERVICES,  
INC., a corporation; NELSON &  
KENNARD, a partnership, DELL  
FINANCIAL SERVICES, L.P., a  
limited partnership; DFS  
ACCEPTANCE, a corporation, DFS  
PRODUCTION, a corporation,  
AMERICAN INVESTMENT BANK,  
N.A., a corporation; and DOES 1  
through 10, inclusive,

Defendants.

CASE NO. 08-CV-1392 JLS NLS

**DEFENDANTS' SEPARATE  
STATEMENT IN SUPPORT OF  
OPPOSITION TO PLAINTIFF'S  
MOTION TO COMPEL FURTHER  
RESPONSE BY NELSON &  
KENNARD TO REQUESTS FOR  
PRODUCTION AND  
INTERROGATORIES**

Date: April 5, 2010

Time: 9:30 a.m.

Crtrm: 1101

The Honorable Nita L. Stormes

1 Defendants submit this Opposition to the Separate Statement Filed by Plaintiff  
2 In Connection with the Motion To Compel Further Responses By Nelson & Kennard:

3 **DOCUMENT REQUESTS**

4  
5 **DOCUMENT REQUEST NO. 1:**

6 Please produce ALL COMMUNICATIONS between NELSON and COLLINS  
7 that RELATE TO Plaintiff David Tourgeman and the collection of his alleged debt.  
8 To the extent that these communications need to be redacted for privilege, please  
9 provide Plaintiff with a privilege log as described above.

10 **RESPONSE TO DOCUMENT REQUEST NO. 1:**

11 Defendant objects to this Request on the grounds that it is overbroad, unduly  
12 burdensome and oppressive, and to the extent that it seeks information which is not  
13 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the  
14 discovery of admissible evidence. Defendant further objects to this Request to the  
15 extent that it seeks proprietary information, trade secret information, information  
16 subject to protective orders, confidentiality agreements, or statutory provisions that  
17 bar the disclosure of that information without the consent of third parties and to the  
18 extent that it seeks information subject to the attorney-client privilege or the attorney  
19 work product doctrine.

20 Subject to and without waiving the forgoing objections or the General  
21 Objections, Defendant will produce all documents in its possession, custody or  
22 control that relate to Plaintiff, his account, or the defenses asserted in this action.

23 **PLAINTIFF'S REASONS TO COMPEL FURTHER RESPONSE TO**  
24 **DOCUMENT REQUEST NO. 1:**

25 Federal Rule of Civil Procedure 34(b)(2)(C) requires that "[a]n objection to  
26 part of a request must specify the part and permit inspection of the rest."; *see also E.*  
27 *& J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D.  
28 Cal. 2006)("If objection is made to part of an item or category, the part shall be

1 specified and inspection permitted of the remaining parts. The party submitting the  
 2 request may move for an order under Rule 37(a) with respect to any objection to or  
 3 other failure to respond to the request or any part thereof, or any failure to permit  
 4 inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant  
 5 to provide supplemental responses because the defendant’s original responses  
 6 contained imprecise, boilerplate objections:

7 Defendant’s responses do not allow for meaningful evaluation. Plaintiff  
 8 and the Court are unable to determine, with certainty, the requests for  
 9 which Defendant is producing documents, the requests for which  
 10 Defendant is withholding documents and on what basis, and the requests  
 11 for which it has no responsive documents. Defendant cites boilerplate  
 general objections, and does not explain why the objection applies to the  
 response or whether documents were withheld pursuant to the stated  
 objections.

11 *Id.* at \*4-5.

12 Nelson objects to Request No. 1 on the basis that it is “overbroad, unduly  
 13 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,  
 14 nor reasonably calculated to lead to the discovery of admissible evidence.” But  
 15 Nelson fails to provide any explanation for these objections. *Keith H. v. Long Beach*  
 16 *Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists  
 17 discovery has the burden to show discovery should not be allowed, and has the  
 18 burden of clarifying, explaining, and supporting its objections.”). Moreover, because  
 19 Nelson’s response is so broad and unspecific, it is impossible to tell whether  
 20 documents are being withheld on the basis of the stated objections, and/or whether  
 21 responsive documents even exist.

22 Further, Federal Rule of Civil Procedure 26(b)(5) states that:

23 When a party withholds information otherwise discoverable by claiming  
 24 that the information is privileged or subject to protection as trial-  
 preparation material, the party must:

- 25 (i) expressly make the claim; and
- 26 (ii) describe the nature of the documents, communications, or tangible things  
 27 not produced or disclosed—and do so in a manner that, without revealing  
 28 information itself privileged or protected, will enable other parties to  
 assess the claim.

1 “A privilege log should contain the following information: (1) the identity and  
 2 position of its author; (2) the identity and position of the recipient(s); (3) the date it  
 3 was prepared or written; (4) the title and description of the document; (5) the subject  
 4 matter addressed; (6) the purposes for which it was prepared or communicated; (7)  
 5 the document’s present location; and (8) the specific privilege or other reason it is  
 6 being withheld.” *Mancini v. Ins. Corp.*, 2009 U.S. Dist. LEXIS 51321, \*10 (S.D. Cal.  
 7 2009). When asserting the attorney-client privilege, “[t]he party asserting the  
 8 privilege bears the initial burden of demonstrating that the communication falls  
 9 within the privilege.” *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620 (C.D. Cal. 2007).

10 Here, Nelson asserts the attorney-client privilege and attorney work product  
 11 protection to Request No. 1. The objection is stated simply as “seek[ing] information  
 12 subject to the attorney-client privilege or the attorney work product doctrine.” Such a  
 13 blanket assertion of the attorney-client privilege or work product doctrine is  
 14 insufficient to enable the propounding party to assess the applicability of the privilege  
 15 or protection to the specific facts of the interrogatory in question. Further, Nelson has  
 16 failed to produce a privilege log containing any of the above-described information as  
 17 required by Federal Rule of Civil Procedure 26(b)(5). (Weaver Dec. ¶13).  
 18 Consequently, the privilege claims cannot be properly evaluated.

19 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
 20 privilege log for response to Request No. 1, provide a supplemental response to  
 21 Request No. 1 without the stated objections, provide a substantive response, and  
 22 produce any documents improperly withheld from production.

23 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 24 **TO DOCUMENT REQUEST NO. 1:**

25 The motion to compel should be denied as to this request because Plaintiff has  
 26 never made any attempt to meet and confer regarding the request before filing the  
 27 motion. No party may move for an order compelling further discovery until after the  
 28 party has made a good faith attempt to meet and confer to resolve the dispute without

1 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this  
2 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) (“The motion must  
3 include a certification that the movant has in good faith conferred or attempted to  
4 confer with the person or party failing to make disclosure or discovery in an effort to  
5 obtain it without court action.”); Local Rule 26.1a (“The court will entertain no  
6 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have  
7 previously met and conferred on **all disputed issues.**”).

8 Despite these clear requirements, this is one of eighteen separate discovery  
9 requests that were never discussed in any letter or any phone call by counsel for  
10 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support  
11 Of Opposition To Motion To Compel And Motion For Protective Order And Award  
12 Of Sanctions (“Narita Decl.”), ¶¶ 3-6, Exs. A and B. Defendants specifically  
13 informed counsel for Tourgeman that the motion was improper because no meet and  
14 confer had been conducted, but Tourgeman’s counsel refused to take the motion off  
15 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

16 Since no meet and confer was conducted as to “all disputed issues” as required  
17 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare  
18 minimum, the Court should deny the motion as to all of the eighteen discovery  
19 requests, including this one, that were never discussed by counsel. *See Presidio*  
20 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, \*3-4  
21 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and  
22 confer conducted in advance of motion). Counsel for Tourgeman should also be  
23 sanctioned for their deliberate refusal to comply with the requirements of the Federal  
24 Rules and the Local Rules.

25  
26 **DOCUMENT REQUEST NO. 2:**

27 Please produce ALL training materials RELATING TO the collection of debts  
28 YOU provide to NELSON employees.

**RESPONSE TO DOCUMENT REQUEST NO. 2:**

Defendant objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request to the extent that it seeks proprietary information, trade secret information, information subject to protective orders, confidentiality agreements, or statutory provisions that bar the disclosure of that information without the consent of third parties and to the extent that it seeks information subject to the attorney-client privilege or the attorney work product doctrine.

Subject to and without waiving the forgoing objections or the General Objections, upon entry of a protective order by the Court, Defendant will produce non-privileged documents that relate to the claims and defenses in this action that are responsive to this Request.

**PLAINTIFF'S REASONS TO COMPEL FURTHER RESPONSE TO DOCUMENT REQUEST NO. 2:**

Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to part of a request must specify the part and permit inspection of the rest.”; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D. Cal. 2006)(“If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant’s original responses contained imprecise, boilerplate objections:

Defendant’s responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which



Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

Id. at \*4-5.

Nelson objects to Request No. 2 on the basis that it is “overbroad, unduly burdensome and oppressive” and “not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.” But Nelson fails to provide any explanation for these objections. *Keith H. v. Long Beach Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.”). Moreover, because Nelson’s response is so broad and unspecific, it is impossible to tell whether documents are being withheld on the basis of the stated objections, and/or whether responsive documents even exist.

Further, Federal Rule of Civil Procedure 26(b)(5) states that:

When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

- (i) expressly make the claim; and
- (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

“A privilege log should contain the following information: (1) the identity and position of its author; (2) the identity and position of the recipient(s); (3) the date it was prepared or written; (4) the title and description of the document; (5) the subject matter addressed; (6) the purposes for which it was prepared or communicated; (7) the document’s present location; and (8) the specific privilege or other reason it is being withheld.” *Mancini v. Ins. Corp.*, 2009 U.S. Dist. LEXIS 51321, \*10 (S.D. Cal. 2009). When asserting the attorney-client privilege, “[t]he party asserting the

1 privilege bears the initial burden of demonstrating that the communication falls  
2 within the privilege.” *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620 (C.D. Cal. 2007).

3 Here, Nelson asserts the attorney-client privilege and attorney work product  
4 protection to Request No. 2. The objection is stated simply as “seek[ing] information  
5 subject to the attorney-client privilege or the attorney work product doctrine.” Such a  
6 blanket assertion of the attorney-client privilege or work product doctrine is  
7 insufficient to enable the propounding party to assess the applicability of the privilege  
8 or protection to the specific facts of the interrogatory in question. Further, Nelson has  
9 failed to produce a privilege log containing any of the above-described information as  
10 required by Federal Rule of Civil Procedure 26(b)(5). (Weaver Dec. ¶13).

11 Consequently, the privilege claims cannot be properly evaluated.

12 Nelson only agrees to produce documents related to the claims and defenses in  
13 this case. This response is unclear. The Request seeks all training materials Nelson’s  
14 provides its employees that are related to the collection of debts. The Complaint,  
15 however, does not limit Nelson’s alleged improper debt collection practices to the  
16 alleged debt collected from Tourgeman. Indeed, the Complaint includes class  
17 allegations and a class comprised of:

18 All consumers residing in the United States and abroad who, during the  
19 period within one year of the date of the filing of the complaint, were  
20 contacted or sued in the United States by either Collins Financial or  
Nelson & Kennard in an effort to collect an alleged debt.

21 Further, the Complaint contains numerous allegations that Nelson improperly  
22 initiates collections and unlawfully files lawsuits against debtors. In particular, the  
23 complaint explicitly alleges that Nelson “fails to take the time and effort to verify the  
24 alleged debts or ensure that the lawsuits it files are legitimate and accurate.” ¶32. The  
25 Complaint also specifies that Nelson “attempts to quickly obtain default judgments  
26 against consumers without having original or copies of original agreements to prove  
27 the existence, terms, and amount of the debt, and in many cases without having  
28 proper information regarding the location of the debtor, thus obtaining default



1 judgments without effectuating proper service.” ¶32. The Complaint also notes that  
 2 “Nelson & Kennard rely on affidavits signed by individuals who the collection law  
 3 firms who have no knowledge of the underlying facts and file verified complaints in  
 4 which they attest to the truthfulness and accuracy of the information regarding the  
 5 alleged debt.” ¶35. In other words, regardless of whether the alleged creditor is  
 6 Collins or the alleged debtor is Tourgeman, Nelson does not verify information  
 7 before it initiates collections and files lawsuits. As such, Nelson’s entire debt  
 8 collection practices are at issue.

9 Since Nelson’s debt collection practices as a whole are at issue, the training  
 10 materials sought in this Request are relevant to showing how Nelson conducts its debt  
 11 collection practices. Therefore, Nelson’s attempt to limit the scope of this Request is  
 12 improper.

13 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
 14 privilege log for response to Request No. 2 or provide a supplemental response to  
 15 Request No. 2 without the stated objections, provide a substantive response, and  
 16 produce any documents improperly withheld from production.

17 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 18 **TO DOCUMENT REQUEST NO. 2:**

19 The motion to compel should be denied as to this request because Plaintiff has  
 20 never made any attempt to meet and confer regarding the request before filing the  
 21 motion. No party may move for an order compelling further discovery until after the  
 22 party has made a good faith attempt to meet and confer to resolve the dispute without  
 23 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this  
 24 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) (“The motion must  
 25 include a certification that the movant has in good faith conferred or attempted to  
 26 confer with the person or party failing to make disclosure or discovery in an effort to  
 27 obtain it without court action.”); Local Rule 26.1a (“The court will entertain no  
 28

1 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have  
2 previously met and conferred on **all disputed issues.**").

3 Despite these clear requirements, this is one of eighteen separate discovery  
4 requests that were never discussed in any letter or any phone call by counsel for  
5 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support  
6 Of Opposition To Motion To Compel And Motion For Protective Order And Award  
7 Of Sanctions ("Narita Decl."), ¶¶ 3-6, Exs. A and B. Defendants specifically  
8 informed counsel for Tourgeman that the motion was improper because no meet and  
9 confer had been conducted, but Tourgeman's counsel refused to take the motion off  
10 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

11 Since no meet and confer was conducted as to "all disputed issues" as required  
12 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare  
13 minimum, the Court should deny the motion as to all of the eighteen discovery  
14 requests, including this one, that were never discussed by counsel. *See Presidio*  
15 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, \*3-4  
16 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and  
17 confer conducted in advance of motion). Counsel for Tourgeman should also be  
18 sanctioned for their deliberate refusal to comply with the requirements of the Federal  
19 Rules and the Local Rules.

20  
21 **DOCUMENT REQUEST NO. 3:**

22 Please produce ALL DOCUMENTS CONCERNING the duties and  
23 responsibilities of NELSON employees who receive data RELATING to alleged  
24 debts.

25 **RESPONSE TO DOCUMENT REQUEST NO. 3:**

26 Defendant objects to this Request on the grounds that it is vague and  
27 ambiguous as to the term "receive data RELATING to alleged debts." Nelson &  
28 Kennard is a debt collection law firm and the request could be read to cover virtually

1 every employee of the firm. Defendant also objects to this Request on the grounds  
2 that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks  
3 information which is not relevant to the subject matter of this lawsuit, nor reasonably  
4 calculated to lead to the discovery of admissible evidence. Defendant further objects  
5 to this Request to the extent that it seeks proprietary information, trade secret  
6 information, information subject to protective orders, confidentiality agreements, or  
7 statutory provisions that bar the disclosure of that information without the consent of  
8 third parties and to the extent that it seeks information subject to the attorney-client  
9 privilege or the attorney work product doctrine.

10 Subject to and without waiving the forgoing objections or the General  
11 Objections, Defendant is willing to meet and confer with Plaintiff to discuss the scope  
12 of this request and any response thereto.

13 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 3:**

14 Defendant objects to this Request on the grounds that it is vague and  
15 ambiguous as to the term “receive data RELATING to alleged debts.” Nelson &  
16 Kennard is a debt collection law firm and the request could be read to cover virtually  
17 every employee of the firm. Defendant also objects to this Request on the grounds  
18 that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks  
19 information which is not relevant to the subject matter of this lawsuit, nor reasonably  
20 calculated to lead to the discovery of admissible evidence. Plaintiff does not claim  
21 that his account data was altered by Nelson & Kennard because the firm employed  
22 faulty procedures for “receiving debt related information.” Rather, Plaintiff alleges  
23 that he paid Dell in full for his computer before the account was ever sold to Collins  
24 Financial Services. Any “debt related information” concerning his account, was  
25 according to Plaintiff’s theory, already inaccurate when it was sold to Collins. The  
26 law firm’s policies relating to receiving “debt related information” from its client are  
27 not relevant. Defendant further objects to this Request to the extent that it seeks  
28 proprietary information, trade secret information, information subject to protective

orders, confidentiality agreements, or statutory provisions that bar the disclosure of that information without the consent of third parties and to the extent that it seeks information subject to the attorney-client privilege or the attorney work product doctrine.

**PLAINTIFF’S REASONS TO COMPEL FURTHER RESPONSE TO  
DOCUMENT REQUEST NO. 3:**

Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to part of a request must specify the part and permit inspection of the rest.”; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D. Cal. 2006)(“If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant’s original responses contained imprecise, boilerplate objections:

Defendant’s responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

*Id.* at \*4-5.

Nelson objects to Request No. 3 on the basis that it is “overbroad, unduly burdensome and oppressive” and “not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.” Nelson argues that Tourgeman’s debt related information was already inaccurate when it was sold to Collins. This response misses the point. The Request seeks documents concerning the duties and responsibilities of Nelson employees who receive data relating to alleged debts. The documents sought reveal certain aspects of Nelson’s

1 debt collection practices, such as whether its employees are properly trained to  
 2 comply with applicable rules and regulations. Thus, it is not important for purposes  
 3 of this documents Request if Tourgeman's debt related information was inaccurate.

4 Nelson objects to Request No. 3 on the basis that the term "receiving data  
 5 relating to alleged debts" is vague and ambiguous. Nelson, however, has failed to  
 6 exercise reason and common sense to attribute ordinary definitions to terms and  
 7 phrases utilized in discovery. *Santana Row Hotel Partners, L.P. v. Zurich Am. Ins.*  
 8 *Co.*, 2007 U.S. Dist. LEXIS 31688 (N.D. Cal. 2007). Nelson's contention that this  
 9 covers every employee of the firm is grossly overstated. This Request only refers to  
 10 the employees who receive debt related information. Thus, this boilerplate objection  
 11 cannot be sustained.

12 Further, Federal Rule of Civil Procedure 26(b)(5) states that:

13 When a party withholds information otherwise discoverable by claiming  
 14 that the information is privileged or subject to protection as trial-  
 preparation material, the party must:

- 15 (i) expressly make the claim; and
- 16 (ii) describe the nature of the documents, communications, or tangible things  
 17 not produced or disclosed—and do so in a manner that, without revealing  
 18 information itself privileged or protected, will enable other parties to  
 assess the claim.

19 "A privilege log should contain the following information: (1) the identity and  
 20 position of its author; (2) the identity and position of the recipient(s); (3) the date it  
 21 was prepared or written; (4) the title and description of the document; (5) the subject  
 22 matter addressed; (6) the purposes for which it was prepared or communicated; (7)  
 23 the document's present location; and (8) the specific privilege or other reason it is  
 24 being withheld." *Mancini v. Ins. Corp.*, 2009 U.S. Dist. LEXIS 51321, \*10 (S.D. Cal.  
 25 2009). When asserting the attorney-client privilege, "[t]he party asserting the  
 26 privilege bears the initial burden of demonstrating that the communication falls  
 27 within the privilege." *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620 (C.D. Cal. 2007).  
 28

1 Here, Nelson asserts the attorney-client privilege and attorney work product  
 2 protection to Request No. 3. The objection is stated simply as “seek[ing] information  
 3 subject to the attorney-client privilege or the attorney work product doctrine.” Such a  
 4 blanket assertion of the attorney-client privilege or work product doctrine is  
 5 insufficient to enable the propounding party to assess the applicability of the privilege  
 6 or protection to the specific facts of the interrogatory in question. Further, Nelson has  
 7 failed to produce a privilege log containing any of the above-described information as  
 8 required by Federal Rule of Civil Procedure 26(b)(5). (Weaver Dec. ¶13).  
 9 Consequently, the privilege claims cannot be properly evaluated.

10 Lastly, Nelson originally tried to restrict the scope of Request No. 3 to  
 11 documents related only to Collins. Now, Nelson has abandoned that position, but still  
 12 attempts to narrow the scope of the requests by agreeing to produce only documents  
 13 related to the duties and procedures of the persons who *upload the account data*  
 14 *received from clients*. Request No. 3, however, was intended to be much broader.  
 15 Request No. 3 seeks documents showing the duties and responsibilities of **all** the  
 16 Nelson employees who receive data relating to alleged debts. These documents are  
 17 highly relevant because they demonstrate how Nelson’s employees conduct their debt  
 18 collection practices. And since there are several Nelson employees who may receive  
 19 the debt related information and participate in the debt collection process, Nelson’s  
 20 supplemental response is insufficient.

21 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
 22 supplemental response to Request No. 3 without the stated objections, provide a  
 23 substantive response, and produce any documents improperly withheld from  
 24 production.

25 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 26 **TO DOCUMENT REQUEST NO. 3:**

27 There is no basis for compelling a further response to this request because  
 28 information about employees who “receive data about alleged debts” is not relevant



1 to any claim at issue, nor likely to lead to the discovery of admissible evidence.  
2 Tourgeman claims that Defendants sued him for a debt that had already been paid “in  
3 full” to Dell, and that Defendants filed suit against him in the wrong judicial district.  
4 He does not allege that his account information was manipulated or mishandled by  
5 employees of Defendants who “receive data about alleged debts,” nor does he claim  
6 that any of those employees may have violated “applicable rules and regulations.”  
7 Rather, Tourgeman claims that Dell failed to credit all of his payments, and that his  
8 account information was already inaccurate at the time it was transmitted to  
9 Defendants. No amount of discovery about the employees who “receive data about  
10 debts” is going to lead to admissible evidence bearing on whether Tourgeman paid  
11 Dell in full or whether Defendants sued Tourgeman in the wrong district.

12 Defendant properly asserted the attorney-client privilege objection in order to  
13 preserve it, but no documents responsive to this request were withheld on the basis of  
14 privilege. Thus there is no need to compel Defendant to produce a privilege log  
15 relating to this request.

16  
17 **DOCUMENT REQUEST NO. 5:**

18 Please produce ALL DOCUMENTS that RELATE TO YOUR policies and  
19 guidelines for filing a lawsuit against an alleged debtor.

20 **RESPONSE TO DOCUMENT REQUEST NO. 5:**

21 Defendant objects to this Request on the grounds that it is overbroad, unduly  
22 burdensome and oppressive, and to the extent that it seeks information which is not  
23 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the  
24 discovery of admissible evidence. Nelson & Kennard is a collection law firm with a  
25 number of clients. The request is so vague and broad and written it could potentially  
26 be read to request copies of every document maintained by the firm.

1 Subject to and without waiving the forgoing objections or the General  
 2 Objections, Defendant is willing to meet and confer with Plaintiff to discuss this  
 3 request and the scope of any response.

4 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 5:**

5 Defendant objects to this Request on the grounds that it is overbroad, unduly  
 6 burdensome and oppressive, and to the extent that it seeks information which is not  
 7 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the  
 8 discovery of admissible evidence. Nelson & Kennard is a collection law firm with a  
 9 number of clients. The request is so vague and broad and written it could potentially  
 10 be read to request copies of every document maintained by the firm.

11 Subject to and without waiving the forgoing objections or the General  
 12 Objections, Defendant responds as follows: Assuming that Plaintiff seeks documents  
 13 related to written policies and guidelines for filing suit against a debtor, without  
 14 waiving any objection that the requested documents are protected by the attorney-  
 15 client privilege or attorney work product doctrine, Defendant will produce responsive  
 16 documents.

17 **PLAINTIFF'S REASONS TO COMPEL FURTHER RESPONSE TO**  
 18 **DOCUMENT REQUEST NO. 5:**

19 Federal Rule of Civil Procedure 34(b)(2)(C) requires that "[a]n objection to  
 20 part of a request must specify the part and permit inspection of the rest."; *see also E.*  
 21 *& J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D.  
 22 Cal. 2006)("If objection is made to part of an item or category, the part shall be  
 23 specified and inspection permitted of the remaining parts. The party submitting the  
 24 request may move for an order under Rule 37(a) with respect to any objection to or  
 25 other failure to respond to the request or any part thereof, or any failure to permit  
 26 inspection as requested."). In *E. & J. Gallo Winery*, the court ordered the defendant  
 27 to provide supplemental responses because the defendant's original responses  
 28 contained imprecise, boilerplate objections:

Defendant's responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

*Id.* at \*4-5.

Nelson objects to Request No. 5 on the basis that it is "overbroad, unduly burdensome and oppressive" and "not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence." Nelson merely states that it is a law firm with a number of clients. This is an insufficient basis for an objection. *See Keith H. v. Long Beach Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) ("The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections."). Additionally, Nelson's contention that this Request potentially covers every document maintained by the firm is without merit. This Request is limited to documents related to Nelson's policies and guidelines for filing lawsuits against alleged debtors.

Nelson objects to Request Nos. 5 [sic] on the basis that the Request is vague and ambiguous. Nelson, however, has failed to exercise reason and common sense to attribute ordinary definitions to terms and phrases utilized in discovery. *Santana Row Hotel Partners, L.P. v. Zurich Am. Ins. Co.*, 2007 U.S. Dist. LEXIS 31688 (N.D. Cal. 2007). Further, Nelson has offered little to no meaningful facts to support the stated objections. Thus, this boilerplate objection cannot be sustained.

Further, Federal Rule of Civil Procedure 26(b)(5) states that:

When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

- (i) expressly make the claim; and
- (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing

1 information itself privileged or protected, will enable other parties to  
2 assess the claim.

3 “A privilege log should contain the following information: (1) the identity and  
4 position of its author; (2) the identity and position of the recipient(s); (3) the date it  
5 was prepared or written; (4) the title and description of the document; (5) the subject  
6 matter addressed; (6) the purposes for which it was prepared or communicated; (7)  
7 the document’s present location; and (8) the specific privilege or other reason it is  
8 being withheld.” *Mancini v. Ins. Corp.*, 2009 U.S. Dist. LEXIS 51321, \*10 (S.D. Cal.  
9 2009). When asserting the attorney-client privilege, “[t]he party asserting the  
10 privilege bears the initial burden of demonstrating that the communication falls  
11 within the privilege.” *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620 (C.D. Cal. 2007).

12 Here, Nelson asserts the attorney-client privilege and attorney work product  
13 protection to Request No. 5. The objection is stated simply as “without waiving any  
14 objection that the requested documents are protected by the attorney-client privilege  
15 or attorney work product doctrine.” Such a blanket assertion of the attorney-client  
16 privilege or work product doctrine is insufficient to enable the propounding party to  
17 assess the applicability of the privilege or protection to the specific facts of the  
18 interrogatory in question. Further, Nelson has failed to produce a privilege log  
19 containing any of the above-described information as required by Federal Rule of  
20 Civil Procedure 26(b)(5). (Weaver Dec. ¶13). Consequently, the privilege claims  
21 cannot be properly evaluated.

22 Accordingly Tourgeman requests that this Court order Nelson to provide a  
23 privilege log for response to Request No. 5, provide a supplemental response to  
24 Request No. 5 without the stated objections, provide a substantive response, and  
25 product any documents improperly withheld from production.

26 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
27 **TO DOCUMENT REQUEST NO. 5:**

28 Defendant has responded to this request, has agreed to produce responsive

1 documents, and has produced responsive documents. It is unclear why Tourgeman  
2 has filed a motion compelling further responses. Defendant properly asserted the  
3 attorney-client privilege objection in order to preserve it, but no documents  
4 responsive to this request were withheld on the basis of privilege. Thus there is no  
5 need to compel Defendant to produce a privilege log relating to this request.

6  
7 **DOCUMENT REQUEST NO. 6:**

8 Please produce ALL DOCUMENTS that RELATE TO YOUR policies and  
9 guidelines for dismissing a complaint against an alleged debtor.

10 **RESPONSE TO DOCUMENT REQUEST NO. 6:**

11 Defendant objects to this Request on the grounds that it is overbroad, unduly  
12 burdensome and oppressive, and to the extent that it seeks information which is not  
13 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the  
14 discovery of admissible evidence. Nelson & Kennard is a collection law firm with a  
15 number of clients. Decisions to dismiss particular lawsuits on behalf of particular  
16 clients will necessarily be made on a case by case basis. Documents relating  
17 to Plaintiff and the litigation relating to his account will be produced, but the firm will  
18 not agree to produce all documents that relate to its decision to dismiss other cases on  
19 behalf of other clients.

20 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 6:**

21 Defendant objects to this Request on the grounds that it is overbroad, unduly  
22 burdensome and oppressive, and to the extent that it seeks information which is not  
23 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the  
24 discovery of admissible evidence. Nelson & Kennard is a collection law firm with a  
25 number of clients. Decisions to dismiss particular lawsuits on behalf of particular  
26 clients will necessarily be made on a case by case basis, in light of the status  
27 of the case and various other factors that may be considered by the attorney.

1 Subject to and without waiving the forgoing objections or the General  
 2 Objections, Defendant responds as follows: Without waiving any objection that the  
 3 requested documents are protected by the attorney-client privilege or attorney work  
 4 product doctrine, Defendant will produce documents, to the extent any exist, which  
 5 relate to its general standards for dismissing collection complaints.

6 **PLAINTIFF’S REASONS TO COMPEL FURTHER RESPONSE TO**  
 7 **DOCUMENT REQUEST NO. 6:**

8 Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to  
 9 part of a request must specify the part and permit inspection of the rest.”; *see also E.*  
 10 *& J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D.  
 11 Cal. 2006)(“If objection is made to part of an item or category, the part shall be  
 12 specified and inspection permitted of the remaining parts. The party submitting the  
 13 request may move for an order under Rule 37(a) with respect to any objection to or  
 14 other failure to respond to the request or any part thereof, or any failure to permit  
 15 inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant  
 16 to provide supplemental responses because the defendant’s original responses  
 17 contained imprecise, boilerplate objections:

18 Defendant’s responses do not allow for meaningful evaluation. Plaintiff  
 19 and the Court are unable to determine, with certainty, the requests for  
 20 which Defendant is producing documents, the requests for which  
 21 Defendant is withholding documents and on what basis, and the requests  
 22 for which it has no responsive documents. Defendant cites boilerplate  
 23 general objections, and does not explain why the objection applies to the  
 24 response or whether documents were withheld pursuant to the stated  
 25 objections.  
 26 *Id.* at \*4-5.

27 Nelson objects to Request No. 6 on the basis that it is “overbroad, unduly  
 28 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,  
 nor reasonably calculated to lead to the discovery of admissible evidence.” Nelson  
 argues it is a collections firm with a number of clients and that decisions to dismiss  
 lawsuits are made on a case by case basis. But this Request asks for Nelson’s policies  
 and guidelines for dismissing complaints against alleged debtors. The Request is



1 clear. Since Nelson's response is so broad and unspecific, it is impossible to tell  
 2 whether documents are being withheld on the basis of the stated objections, and/or  
 3 whether responsive documents even exist.

4 Further, Federal Rule of Civil Procedure 26(b)(5) states that:

5 When a party withholds information otherwise discoverable by claiming  
 6 that the information is privileged or subject to protection as trial-  
 preparation material, the party must:

- 7 (i) expressly make the claim; and
- 8 (ii) describe the nature of the documents, communications, or tangible things  
 9 not produced or disclosed—and do so in a manner that, without revealing  
 information itself privileged or protected, will enable other parties to  
 10 assess the claim.

11 “A privilege log should contain the following information: (1) the identity and  
 12 position of its author; (2) the identity and position of the recipient(s); (3) the date it  
 13 was prepared or written; (4) the title and description of the document; (5) the subject  
 14 matter addressed; (6) the purposes for which it was prepared or communicated; (7)  
 15 the document's present location; and (8) the specific privilege or other reason it is  
 16 being withheld.” *Mancini v. Ins. Corp.*, 2009 U.S. Dist. LEXIS 51321, \*10 (S.D. Cal.  
 17 2009). When asserting the attorney-client privilege, “[t]he party asserting the  
 18 privilege bears the initial burden of demonstrating that the communication falls  
 19 within the privilege.” *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620 (C.D. Cal. 2007).

20 Here, Nelson asserts the attorney-client privilege and attorney work product  
 21 protection to Request No. 6. The objection is stated simply as “without waiving any  
 22 objection that the requested documents are protected by the attorney-client privilege  
 23 or attorney work product doctrine.” Such a blanket assertion of the attorney-client  
 24 privilege or work product doctrine is insufficient to enable the propounding party to  
 25 assess the applicability of the privilege or protection to the specific facts of the  
 26 interrogatory in question. Further, Nelson has failed to produce a privilege log  
 27 containing any of the above-described information as required by Federal Rule of  
 28

1 Civil Procedure 26(b)(5). (Weaver Dec. ¶13). Consequently, the privilege claims  
2 cannot be properly evaluated.

3 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
4 privilege log for response to Request No. 6, provide a supplemental response to  
5 Request No. 6 without the stated objections, provide a substantive response, and  
6 product any documents improperly withheld from production.

7 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
8 **TO DOCUMENT REQUEST NO. 6:**

9 There is no basis for compelling a further response to this request because  
10 information about “policies and guidelines for dismissing a complaint” is not relevant  
11 to any claim at issue, nor likely to lead to the discovery of admissible evidence.  
12 Tourgeman claims that Defendants sued him for a debt that had already been paid “in  
13 full” to Dell, and that Defendants filed suit against him in the wrong judicial district.  
14 He does not allege that there was anything unlawful about the fact that the state court  
15 collection complaint filed against him was dismissed. To the contrary, Tourgeman  
16 suggests that the case should not have been filed in the first place. Under section  
17 581(c) of the California Code of Civil Procedure, any California litigant is permitted  
18 to dismiss a lawsuit before trial. The FDCPA does not prohibit collectors from  
19 dismissing actions. No amount of discovery about “policies and guidelines for  
20 dismissing a complaint” is going to lead to admissible evidence bearing on whether  
21 Tourgeman paid Dell in full or whether Defendants sued Tourgeman in the wrong  
22 district.

23 In any event, Defendant has responded to this request, has agreed to produce  
24 responsive documents, and has produced responsive documents. It is unclear why  
25 Tourgeman has filed a motion compelling further responses. Defendant properly  
26 asserted the attorney-client privilege objection in order to preserve it, but no  
27 documents responsive to this request were withheld on the basis of privilege. There  
28 is no need to compel Defendant to produce a privilege log relating to this request.

**DOCUMENT REQUEST NO. 7:**

Please produce ALL form letters, enclosures, envelopes, complaints, memoranda, etc. used by NELSON in its debt collection activity.

**RESPONSE TO DOCUMENT REQUEST NO. 7:**

Defendant objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Nelson & Kennard is a collection law firm with a number of clients. Documents relating to Plaintiff and the litigation relating to his account will be produced, but the firm will not agree to produce all documents that relate to other cases filed on behalf of other clients.

**PLAINTIFF'S REASONS TO COMPEL FURTHER RESPONSE TO DOCUMENT REQUEST NO. 7:**

Federal Rule of Civil Procedure 34(b)(2)(C) requires that "[a]n objection to part of a request must specify the part and permit inspection of the rest."; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D. Cal. 2006)("If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested."). *In E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant's original responses contained imprecise, boilerplate objections:

Defendant's responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

*Id.* at \*4-5.

1 Nelson objects to Request No. 7 on the basis that it is “overbroad, unduly  
 2 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,  
 3 nor reasonably calculated to lead to the discovery of admissible evidence.” But  
 4 Nelson fails to provide any explanation for these objections. *Keith H. v. Long Beach*  
 5 *Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists  
 6 discovery has the burden to show discovery should not be allowed, and has the  
 7 burden of clarifying, explaining, and supporting its objections.”). Moreover, because  
 8 Nelson’s response is so broad and unspecific, it is impossible to tell whether  
 9 documents are being withheld on the basis of the stated objections, and/or whether  
 10 responsive documents even exist.

11 Nelson also improperly narrows the scope of Request No. 7 and attempts to  
 12 limit production to documents related only to Tourgeman. The Complaint, however,  
 13 does not limit Nelson’s alleged improper debt collection practices to the alleged debt  
 14 collected from Tourgeman. Indeed, the Complaint includes class allegations and a  
 15 class comprised of:

16 All consumers residing in the United States and abroad, who during the  
 17 period within one year of the date of the filing of the complaint, were  
 18 contacted or sued in the United states by either Collins Financial or Nelson  
 & Kennard in an effort to collect an alleged debt.

19 Further, the Complaint contains numerous allegations that Nelson improperly  
 20 initiates collections and unlawfully files lawsuits against debtors. In particular, the  
 21 Complaint explicitly alleges that Nelson “fails to take the time and effort to verify the  
 22 alleged debts or ensure that the lawsuits it files are legitimate and accurate.” ¶32. The  
 23 Complaint also specifies that Nelson “attempts to quickly obtain default judgments  
 24 against consumers without having original or copies of original agreements to prove  
 25 the existence, terms, and amount of the debt, and in many cases without having  
 26 proper information regarding the location of the debtor, thus obtaining default  
 27 judgments without effectuating proper service.” ¶32. The Complaint also notes that  
 28 “Nelson & Kennard rely on affidavits signed by individuals who the collection law

1 firms know have no knowledge of the underlying facts and file verified complaints in  
 2 which they attest to the truthfulness and accuracy of the information regarding the  
 3 alleged debt.” ¶35. In other words, regardless of whether the alleged creditor is  
 4 Collins or the alleged debtor is Tourgeman, Nelson does not verify information  
 5 before it initiates collections and files lawsuits. As such, Nelson’s entire debt  
 6 collection practices are at issue.

7 Since Nelson’s debt collection practices as a whole are at issue, all form letters,  
 8 form complaints, and other form documents are relevant to showing how Nelson  
 9 conducts its debt collection practices. Part of Nelson’s debt collection involves its  
 10 communications with alleged debtors. Further, because this is a class action lawsuit  
 11 challenging Nelson’s business practices, Nelson’s offer to produce documents related  
 12 only to Tourgeman and his account is sufficient. Thus, Request No. 7 is relevant and  
 13 cannot be narrowed.

14 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
 15 supplemental response to Request No. 7 without the stated objections, provide a  
 16 substantive response, and produce any documents improperly withheld from  
 17 production.

18 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 19 **TO DOCUMENT REQUEST NO. 7:**

20 There is no basis for compelling a further response to this request because  
 21 information about “form letters, enclosures, envelopes, complaints, memoranda, etc”  
 22 used by Defendant is not relevant to any claim at issue, nor likely to lead to the  
 23 discovery of admissible evidence. Tourgeman claims that Defendants sued him for a  
 24 debt that had already been paid “in full” to Dell, and that Defendants filed suit against  
 25 him in the wrong judicial district. He has not challenged any of the “forms” used by  
 26 Defendant for its collection letters, enclosures, envelopes, complaints or memoranda.

27 Tourgeman suggests this request is proper because he seeks to represent a  
 28 purported FDCPA class of all persons who were “contacted or sued” by Defendants,

1 and therefore “all” of Defendants’ collection practices are at issue. He is wrong. The  
 2 FDCPA does not prohibit collectors from contacting consumers, nor does it bar  
 3 collectors from filing suits. Rather, the Act prohibits collectors from engaging in a  
 4 specific set of unlawful collection practices. *See* 15 U.S.C. §§ 1692b-1692j. In fact,  
 5 the Ninth Circuit has repeatedly recognized the Act was passed to protect consumers  
 6 from serious threats, harassment, abuse and other deceptive practices utilized by  
 7 unscrupulous collectors. *See* 15 U.S.C. § 1692; *Pressley v. Capital Credit and*  
 8 *Collection*, 760 F.2d 922, 925 (9th Cir. 1985) (purpose of Act “is to protect  
 9 consumers from a host of unfair, harassing, and deceptive debt collection practices  
 10 without imposing unnecessary restrictions on ethical debt collectors”) (citation  
 11 omitted). It is not a wholesale ban on any type of contact with a debtor, nor does it  
 12 prohibit collectors from filing suit. The focus of the Act is prevention of deceptive  
 13 and intimidating conduct by collectors that would “seriously disrupt a debtor’s life”:

14       The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors  
 15       from abuse, harassment and deceptive collection practices. . . . Congress was  
 16       concerned with disruptive, threatening, and dishonest tactics. The Senate  
 17       Report accompanying the Act cites practices such as ‘threats of violence,  
 18       telephone calls at unreasonable hours [and] misrepresentation of consumer’s  
 legal rights.’ (Citation). **In other words, Congress seems to have contemplated the type of actions that would intimidate unsophisticated individuals and which, in the words of the Seventh Circuit, ‘would likely disrupt a debtor’s life.’** (Citation).

19 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938-39 (9th Cir. 2007) (emphasis  
 20 added).

21       Tourgeman cannot seek discovery regarding every debtor “contacted or sued”  
 22 by Defendants unless he identifies how the “contacts” or “suits” allegedly violated the  
 23 FDCPA. In *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027 (9th Cir. 2010), the Ninth  
 24 Circuit held that an allegedly false and misleading statement by a collector does not  
 25 violate the FDCPA unless it is “material.” *Id.* At 1033-34. A “material”  
 26 misstatement is one that is “genuinely misleading” and that “may frustrate the  
 27 consumer’s ability to intelligently choose his or her response” to the collector’s  
 28 communication. *Id.* at 1034. The Court noted that:



1 In assessing FDCPA liability, **we are not concerned with mere technical**  
 2 **falsehoods that mislead no one**, but instead with genuinely misleading  
 3 statements that may frustrate a consumer's ability to intelligently choose his or  
 4 her response. **Here, the statement in the Complaint did not undermine**  
 5 **Donohue's ability to intelligently choose her action concerning her debt.**

6 *Id.* at 1034 (emphasis added).

7 Tourgeman claims that Defendants sued him for a debt that was paid "in full"  
 8 and filed suit in the wrong judicial district. He is entitled to discovery related to those  
 9 claims. His request for request for information about "form letters, enclosures,  
 10 envelopes, complaints, memoranda, etc" is not relevant to his claims, nor will it  
 11 identify the number of class members.

#### 12 **DOCUMENT REQUEST NO. 8:**

13 Please produce ALL DOCUMENTS that RELATE TO YOUR investigation of  
 14 Plaintiff David Tourgeman's alleged debt.

#### 15 **RESPONSE TO DOCUMENT REQUEST NO. 8:**

16 Defendant objects to this Request on the grounds that it is vague and  
 17 ambiguous as to the term "investigation." Nelson & Kennard is a collection law firm,  
 18 not an investigation firm. The firm does not required by law to conduct an  
 19 independent investigation into the accounts that are placed with it for collection.  
 20 Subject to and without waiving the forgoing objections or the General Objections,  
 21 Defendant will produce non-privileged documents in its possession, custody or  
 22 control that relate to Plaintiff, his account or the defenses asserted in this action.

#### 23 **PLAINTIFF'S REASONS TO COMPEL FURTHER RESPONSE TO** 24 **DOCUMENT REQUEST NO. 8:**

25 Nelson objects to document Request No. 8 on the basis that the term  
 26 "investigation" is vague and ambiguous. Nelson, however, has failed to exercise  
 27 reason and common sense to attribute ordinary definitions to terms and phrases  
 28 utilized in discovery. *Santana Row Hotel Partners, L.P. v. Zurich Am. Ins. Co.*, 2007  
 U.S. Dist. LEXIS 31688 (N.D. Cal. 2007). Further, Nelson has offered little

1 meaningful facts to support the stated objections, contending it is a collections firm  
 2 and not an investigation firm. Although Nelson is a collections firm, it must conduct  
 3 some type of investigation before it files lawsuits against alleged debtors. Thus, this  
 4 boilerplate objection cannot be sustained.

5 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
 6 supplemental response to Request No. 8 without the stated objections, provide a  
 7 substantive response, and produce any documents improperly withheld from  
 8 production.

9 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 10 **TO DOCUMENT REQUEST NO. 8:**

11 Discovery about Defendant's "investigation" of Tourgeman's debt is not proper  
 12 because the FDCPA does not impose a duty on collectors to independently investigate  
 13 and verify debts before the initiate the collection process. Even though the law does  
 14 not impose such a duty, Defendants have no business interest in seeking to collect  
 15 money from debtors that do not owe it. Defendants do have procedures in place to  
 16 prevent any attempt to collect debts that have already been paid, and they have  
 17 provided this information to Tourgeman already. There is no basis for compelling a  
 18 further response.

19 The FDCPA does not require a debt collector to independently verify the  
 20 validity of a debt before attempting to collect it. Instead, the FDCPA allows a  
 21 collector to assume the debt is valid, unless the debtor submits a timely dispute to the  
 22 collector. *See* 15 U.S.C. § 1692g(a)(3) (collector must notify consumer that debt will  
 23 be assumed valid unless consumer disputes validity of debt within 30 days of receipt  
 24 of notice); *Smith v. Transworld Sys., Inc.*, 953 F.2d 1025, 1032 (6th Cir. 1992)  
 25 (FDCPA does not require collector to independently investigate debt referred for  
 26 collection); *Hyman v. Tate*, 362 F.3d 965, 968 (7th Cir. 2004) (FDCPA does not  
 27 require collector to independently verify validity of debt to qualify for "bona fide  
 28 error" defense). Here, non-party Paragon Way, Inc. and Nelson & Kennard both sent

1 notices to Tourgeman advising him of his right to dispute the debt, but Tourgeman  
2 never responded.<sup>1</sup>

3 If Tourgeman is arguing that discovery about Defendants' "investigating" of  
4 debts is relevant to show that Defendants did not have possession of sufficient  
5 evidence to prove their case before the collection suit was filed, his requests are  
6 improper as this Court has already rejected this theory of recovery.<sup>2</sup>

7 Defendants have provided discovery on the procedures used to ensure that they  
8 are filing suit on valid debts and are filing suit in the correct judicial district. The  
9 motion should be denied as to this request.

10  
11 **DOCUMENT REQUEST NO. 9:**

12 Please produce ALL DOCUMENTS that RELATE TO any communications  
13 between YOU and COLLINS regarding collection practices and procedures.

14 **RESPONSE TO DOCUMENT REQUEST NO. 9:**

15 Defendant objects to this Request on the grounds that it is vague and  
16 ambiguous with respect to the term "regarding collection practices and procedures."  
17 Subject to and without waiving the forgoing objections or the General Objections,  
18 Defendant responds as follows: No such documents exist.

19  
20  
21  
22 <sup>1</sup> See Declaration of Howard Knauer In Support Of Motion For Summary  
23 Judgment (Docket 75), ¶ 5, Ex. B; Declaration of Jonathan E. Ayers In Support Of  
24 Motion For Summary Judgment (Docket 73), ¶ 4, Ex. B.

25 <sup>2</sup> See Order Granting In Part And Denying In Part Defendant's Motion To Dismiss  
26 And Motion To Strike (Docket 58), at 7 ("[T]he filing of a lawsuit, even if a plaintiff  
27 does not have the means of proving the case at filing or does not ultimately prevail, has  
28 not by itself been considered harassment or abuse under the FDCPA. See, e.g., *Heintz*  
*v. Jenkins*, 514 U.S. 291, 296 (1995); *Harvey v. Great Seneca Financial Corp.*, 453 F.3d  
324, 330 (6th Cir. 2006).

**PLAINTIFF’S REASONS TO COMPEL FURTHER RESPONSE TO  
DOCUMENT REQUEST NO. 9:**

Nelson objects to document Request No. 9 on the basis that the term “regarding collection practices and procedures” is vague and ambiguous. Nelson, however, has failed to exercise reason and common sense to attribute ordinary definitions to terms and phrases utilized in discovery. *Santa Row Hotel Partners, L.P. v. Zurich Am. Ins. Co.*, 2007 U.S. Dist. LEXIS 31688 (N.D. Cal. 2007). Further, Nelson has offered no facts to support the stated objections. Thus, this boilerplate objection cannot be sustained.

Further, Nelson’s response that “No such documents exist” is suspect. Collins is an entity specializing in debt collections while Nelson is a law firm that specializes in debt collection lawsuits. These two firms are frequently in contact as Collins regularly utilizes Nelson’s services. Therefore, it is highly unlikely that there are no documents evidencing communications concerning Nelson’s or Collins’s debt collection practices and procedures.

Accordingly, Tourgeman requests that this Court order Nelson to provide a supplemental response to Request No. 9 without the stated objections, provide a substantive response, and produce any documents improperly withheld from production.

**DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED  
TO DOCUMENT REQUEST NO. 9:**

Defendant has already stated that no such documents exist. The Court cannot compel production of non-existent documents. There is no basis for compelling a further response to this request.

**DOCUMENT REQUEST NO. 10:**

Please produce ALL complaints YOU filed on behalf of COLLINS from July 31, 2007 to the present suing for breach of contract or under Rule 3.740 “collections cases.”

**RESPONSE TO DOCUMENT REQUEST NO. 10:**

Defendant also objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Complaints filed by Nelson & Kennard against other debtors have no bearing on this action. Defendant does not concede that Plaintiff may pursue this action as a purported class action nor does Defendant concede that, even if class treatment were appropriate, that a class action is proper here, or that Plaintiff is a proper class representative with standing to pursue claims on behalf of a purported class. At best, the Request is premature.

**PLAINTIFF'S REASONS TO COMPEL FURTHER RESPONSE TO DOCUMENT REQUEST NO. 10:**

Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to part of a request must specify the part and permit inspection of the rest.”; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4 (E.D. Cal. 2006) (“If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant’s original responses contained imprecise, boilerplate objections:

Defendant’s responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

*Id.* at \*4-5.

1 Nelson objects to Request No. 10 on the basis that it is “overbroad, unduly  
 2 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,  
 3 nor reasonably calculated to lead to the discovery of admissible evidence.” But  
 4 Nelson fails to provide any explanation for these objections. *Keith H. v. Long Beach*  
 5 *Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists  
 6 discovery has the burden to show discovery should not be allowed, and has the  
 7 burden of clarifying, explaining, and supporting its objections.”). Moreover, because  
 8 Nelson’s response is so broad and unspecific, it is impossible to tell whether  
 9 documents are being withheld on the basis of the stated objections, and/or whether  
 10 responsive documents even exist.

11 Nelson also claims that “[c]omplaints filed by Nelson & Kennard against other  
 12 debtors have no bearing on this action.” The Complaint, however, contains class  
 13 allegations that Nelson engages in improper debt collection activities. Indeed, the  
 14 Complaint includes class allegations and a class comprised of:

15 All consumers residing in the United States and abroad, who during the  
 16 period within one year of the date of the filing of the complaint, were  
 17 contacted or sued in the United states by either Collins Financial or Nelson  
 & Kennard in an effort to collect an alleged debt.

18 Further, the Complaint contains numerous allegations that Nelson improperly  
 19 initiates collections and unlawfully files lawsuits against debtors. In particular, the  
 20 Complaint explicitly alleges that Nelson “fails to take the time and effort to verify the  
 21 alleged debts or ensure that the lawsuits it files are legitimate and accurate.” ¶32. The  
 22 Complaint also specifies that Nelson “attempts to quickly obtain default judgments  
 23 against consumers without having original or copies of original agreements to prove  
 24 the existence, terms, and amount of the debt, and in many cases without having  
 25 proper information regarding the location of the debtor, thus obtaining default  
 26 judgments without effectuating proper service.” ¶32. The Complaint also notes that  
 27 “Nelson & Kennard rely on affidavits signed by individuals who the collection law  
 28 firms know have no knowledge of the underlying facts and file verified complaints in



1 which they attest to the truthfulness and accuracy of the information regarding the  
2 alleged debt.” ¶35. In other words, regardless of whether the alleged creditor is  
3 Collins or the alleged debtor is Tourgeman, Nelson does not verify information  
4 before it initiates collections and files lawsuits. As such, Nelson’s entire debt  
5 collection practices are at issue.

6 Since Nelson’s debt collection practices as a whole are at issue, all complaints  
7 filed on Collins’s behalf are relevant to establishing whether Nelson files legitimate  
8 and accurate lawsuits. Part of Nelson’s improper practices involves its decision to  
9 file lawsuits against alleged debtors. Thus, Request No. 10 is relevant and cannot be  
10 narrowed.

11 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
12 supplemental response to Request No. 10 without the stated objections, provide a  
13 substantive response, and produce any documents improperly withheld from  
14 production.

15 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
16 **TO DOCUMENT REQUEST NO. 10:**

17 There is no basis for compelling a further response to this request because  
18 production of copies of “all complaints” filed by Nelson & Kennard for Collins  
19 during a three-year period is not relevant to any claim at issue, nor likely to lead to  
20 the discovery of admissible evidence. Tourgeman claims that Defendants sued him  
21 for a debt that had already been paid “in full” to Dell, and that Defendants filed suit  
22 against him in the wrong judicial district. He has not alleged that every single state  
23 court collection complaint that Nelson & Kennard filed for Collins was for a debt that  
24 was not due, nor does he claim that every complaint was filed in the wrong district.  
25 Nor could he makes such claims.

26 Tourgeman suggests this request is proper because he seeks to represent a  
27 purported FDCPA class of all persons who were “contacted or sued” by Defendants,  
28 and therefore “all” of Defendants’ collection practices are at issue. He is wrong. The

1 FDCPA does not prohibit collectors from contacting consumers, nor does it bar  
 2 collectors from filing suits. Rather, the Act prohibits collectors from engaging in a  
 3 specific set of unlawful collection practices. *See* 15 U.S.C. §§ 1692b-1692j. In fact,  
 4 the Ninth Circuit has repeatedly recognized the Act was passed to protect consumers  
 5 from serious threats, harassment, abuse and other deceptive practices utilized by  
 6 unscrupulous collectors. *See* 15 U.S.C. § 1692; *Pressley v. Capital Credit and*  
 7 *Collection*, 760 F.2d 922, 925 (9th Cir. 1985) (purpose of Act “is to protect  
 8 consumers from a host of unfair, harassing, and deceptive debt collection practices  
 9 without imposing unnecessary restrictions on ethical debt collectors”) (citation  
 10 omitted). It is not a wholesale ban on any type of contact with a debtor, nor does it  
 11 prohibit collectors from filing suit. The focus of the Act is prevention of deceptive  
 12 and intimidating conduct by collectors that would “seriously disrupt a debtor’s life”:

13       The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors  
 14       from abuse, harassment and deceptive collection practices. . . . Congress was  
 15       concerned with disruptive, threatening, and dishonest tactics. The Senate  
 16       Report accompanying the Act cites practices such as ‘threats of violence,  
 17       telephone calls at unreasonable hours [and] misrepresentation of consumer’s  
 legal rights.’ (Citation). **In other words, Congress seems to have contemplated the type of actions that would intimidate unsophisticated individuals and which, in the words of the Seventh Circuit, ‘would likely disrupt a debtor’s life.’** (Citation).

18 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938-39 (9th Cir. 2007) (emphasis  
 19 added).

20       Tourgeman cannot seek discovery regarding every debtor “contacted or sued”  
 21 by Defendants unless he identifies how the “contacts” or “suits” allegedly violated the  
 22 FDCPA. In *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027 (9th Cir. 2010), the Ninth  
 23 Circuit held that an allegedly false and misleading statement by a collector does not  
 24 violate the FDCPA unless it is “material.” *Id.* At 1033-34. A “material”  
 25 misstatement is one that is “genuinely misleading” and that “may frustrate the  
 26 consumer’s ability to intelligently choose his or her response” to the collector’s  
 27 communication. *Id.* at 1034. The Court noted that:

1 In assessing FDCPA liability, **we are not concerned with mere technical**  
 2 **falsehoods that mislead no one**, but instead with genuinely misleading  
 3 statements that may frustrate a consumer's ability to intelligently choose his or  
 4 her response. **Here, the statement in the Complaint did not undermine**  
 5 **Donohue's ability to intelligently choose her action concerning her debt.**

6 *Id.* at 1034 (emphasis added).

7 Tourgeman claims that Defendants sued him for a debt that was paid "in full"  
 8 and filed suit in the wrong judicial district. He is entitled to discovery related to those  
 9 claims. His request for request for copies of "all complaints" that Nelson & Kennard  
 10 filed for Collins is not relevant to his claims, nor will it identify the number of class  
 11 members.

12 **DOCUMENT REQUEST NO. 11:**

13 Please produce ALL DOCUMENTS that RELATE TO financial arrangements  
 14 between YOU and COLLINS.

15 **RESPONSE TO DOCUMENT REQUEST NO. 11:**

16 Defendant objects to this Request on the grounds that it is vague and  
 17 ambiguous as to the term "financial arrangements." Subject to the forgoing,  
 18 Defendant responds as follows: No such documents exist.

19 **PLAINTIFF'S REASONS TO COMPEL FURTHER RESPONSE TO**  
 20 **DOCUMENT REQUEST NO. 11:**

21 Nelson objects to Request No. 11 on the basis that the term "financial  
 22 arrangements" is vague and ambiguous. Nelson, however, has failed to exercise  
 23 reason and common sense to attribute ordinary definitions to terms and phrases  
 24 utilized in discovery. *Santana Row Hotel Partners, L.P. v. Zurich Am. Ins. Co.*, 2007  
 25 U.S. Dist. LEXIS 31688 (N.D. Cal 2007). This Request is clear and seeks documents  
 26 evidencing payments from Collins to Nelson for services rendered. Stated differently,  
 27 this Request seeks documents that show how Nelson is compensated for the services  
 28 it provides to Collins. Nelson has offered little to no facts to support the stated  
 objections. Thus, this boilerplate objection cannot be sustained.

Further, Nelson's response that "No such documents exist" is suspect. Collins is an entity specializing in debt collections while Nelson is a law firm that specializes in debt collection lawsuits. The two firms are frequently in contact as Collins regularly utilizes Nelson's services. It is inconceivable that Nelson does not expect to receive payment for its services. Finally, if Nelson is working on a contingency basis, the contingency fee contract must be in writing under California Business and Professions Code 6147.

Accordingly, Tourgeman requests that this Court order Nelson to provide a supplemental response to Request No. 11 without the stated objections, provide a substantive response, and produce any documents improperly withheld from production.

**DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED TO DOCUMENT REQUEST NO. 11:**

Defendant has already stated that no such documents exist. The Court cannot compel production of non-existent documents. There is no basis for compelling a further response to this request.

**DOCUMENT REQUEST NO. 12:**

Please produce ALL DOCUMENTS pertaining to the number of alleged debtors that YOU filed complaints against from July 31, 2007 to the present.

**RESPONSE TO DOCUMENT REQUEST NO. 12:**

Defendant objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant does not concede that Plaintiff may pursue this action as a purported class action nor does Defendant concede that, even if class treatment were appropriate, that a class action is proper here, or that Plaintiff

1 is a proper class representative with standing to pursue claims on behalf of a  
 2 purported class. At best, the Request is premature.

3 **PLAINTIFF’S REASONS TO COMPEL FURTHER RESPONSE TO**  
 4 **DOCUMENT REQUEST NO. 12:**

5 Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to  
 6 part of a request must specify the part and permit inspection of the rest.”; *see also E.*  
 7 *& J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D.  
 8 Cal. 2006)(“If objection is made to part of an item or category, the part shall be  
 9 specified and inspection permitted of the remaining parts. The party submitting the  
 10 request may move for an order under Rule 37(a) with respect to any objection to or  
 11 other failure to respond to the request or any part thereof, or any failure to permit  
 12 inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant  
 13 to provide supplemental responses because the defendant’s original responses  
 14 contained imprecise, boilerplate objections:

15 Defendant’s responses do not allow for meaningful evaluation. Plaintiff  
 16 and the Court are unable to determine, with certainty, the requests for  
 17 which Defendant is producing documents, the requests for which  
 18 Defendant is withholding documents and on what basis, and the requests  
 19 for which it has no responsive documents. Defendant cites boilerplate  
 general objections, and does not explain why the objection applies to the  
 response or whether documents were withheld pursuant to the stated  
 objections.  
 Id. at \*4-5.

20 Nelson objects to Request No. 12 on the basis that it is “overbroad, unduly  
 21 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,  
 22 nor reasonably calculated to lead to the discovery of admissible evidence.” But  
 23 Nelson fails to provide any explanation for these objections. *Keith H. v. Long Beach*  
 24 *Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists  
 25 discovery has the burden to show discovery should not be allowed, and has the  
 26 burden of clarifying, explaining, and supporting its objections.”). Moreover, because  
 27 Nelson’s response is so broad and unspecific, it is impossible to tell whether  
 28 documents are being withheld on the basis of the stated objections, and/or whether

1 responsive documents even exist. And, Nelson has not agreed to produce any  
2 responsive documents.

3 Request No. 12 is relevant and reasonably calculated to lead to the discovery of  
4 admissible evidence. This Request seeks documents related to the number of alleged  
5 debtors that Nelson filed complaints against and establishes the number of class  
6 members. Since this is a class action alleging Nelson engages in improper debt  
7 collection practices, this Request is relevant and cannot be narrowed.

8 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
9 supplemental response to Request No. 12 without the stated objections, provide a  
10 substantive response, and produce any documents improperly withheld from  
11 production.

12 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
13 **TO DOCUMENT REQUEST NO. 12:**

14 There is no basis for compelling a further response to this request because the  
15 number of debtors that Nelson & Kennard sued during a three-year period is not  
16 relevant to any claim at issue, nor likely to lead to the discovery of admissible  
17 evidence. Tourgeman claims that Defendants sued him for a debt that had already  
18 been paid "in full" to Dell, and that Defendants filed suit against him in the wrong  
19 judicial district. He has not alleged that every single state court collection complaint  
20 that Nelson & Kennard filed was for a debt that was not due, nor does he claim that  
21 every complaint was filed in the wrong district. Nor could he make such claims.

22 Tourgeman suggests this request is proper because he seeks to represent a  
23 purported FDCPA class of all persons who were "contacted or sued" by Defendants,  
24 and therefore "all" of Defendants' collection practices are at issue. He is wrong. The  
25 FDCPA does not prohibit collectors from contacting consumers, nor does it bar  
26 collectors from filing suits. Rather, the Act prohibits collectors from engaging in a  
27 specific set of unlawful collection practices. *See* 15 U.S.C. §§ 1692b-1692j. In fact,  
28 the Ninth Circuit has repeatedly recognized the Act was passed to protect consumers



1 from serious threats, harassment, abuse and other deceptive practices utilized by  
 2 unscrupulous collectors. *See* 15 U.S.C. § 1692; *Pressley v. Capital Credit and*  
 3 *Collection*, 760 F.2d 922, 925 (9th Cir. 1985) (purpose of Act “is to protect  
 4 consumers from a host of unfair, harassing, and deceptive debt collection practices  
 5 without imposing unnecessary restrictions on ethical debt collectors”) (citation  
 6 omitted). It is not a wholesale ban on any type of contact with a debtor, nor does it  
 7 prohibit collectors from filing suit. The focus of the Act is prevention of deceptive  
 8 and intimidating conduct by collectors that would “seriously disrupt a debtor’s life”:

9       The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors  
 10       from abuse, harassment and deceptive collection practices. . . . Congress was  
 11       concerned with disruptive, threatening, and dishonest tactics. The Senate  
 12       Report accompanying the Act cites practices such as ‘threats of violence,  
 13       telephone calls at unreasonable hours [and] misrepresentation of consumer’s  
 legal rights.’ (Citation). **In other words, Congress seems to have contemplated the type of actions that would intimidate unsophisticated individuals and which, in the words of the Seventh Circuit, ‘would likely disrupt a debtor’s life.’** (Citation).

14 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938-39 (9th Cir. 2007) (emphasis  
 15 added).

16       Tourgeman cannot seek discovery regarding every debtor “contacted or sued”  
 17 by Defendants unless he identifies how the “contacts” or “suits” allegedly violated the  
 18 FDCPA. In *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027 (9th Cir. 2010), the Ninth  
 19 Circuit held that an allegedly false and misleading statement by a collector does not  
 20 violate the FDCPA unless it is “material.” *Id.* At 1033-34. A “material”  
 21 misstatement is one that is “genuinely misleading” and that “may frustrate the  
 22 consumer’s ability to intelligently choose his or her response” to the collector’s  
 23 communication. *Id.* at 1034. The Court noted that:

24       In assessing FDCPA liability, **we are not concerned with mere technical**  
 25       **falsehoods that mislead no one**, but instead with genuinely misleading  
 26       statements that may frustrate a consumer’s ability to intelligently choose his or  
 her response. **Here, the statement in the Complaint did not undermine Donohue’s ability to intelligently choose her action concerning her debt.**

27 *Id.* at 1034 (emphasis added).  
 28

1       Tourgeman claims that Defendants sued him for a debt that was paid “in full”  
 2 and filed suit in the wrong judicial district. He is not entitled to discovery regarding  
 3 the total number of debtors that Nelson & Kennard has sued. It does not relate to any  
 4 of his claims and will not identify the number of class members.

5  
 6 **DOCUMENT REQUEST NO. 13:**

7       Please produce ALL DOCUMENTS pertaining to the number of alleged  
 8 debtors that YOU mailed letters to requesting payment of an alleged debt from July  
 9 31, 2007 to the present.

10 **RESPONSE TO DOCUMENT REQUEST NO. 13:**

11       Defendant objects to this Request on the grounds that it is overbroad, unduly  
 12 burdensome and oppressive, and to the extent that it seeks information which is not  
 13 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the  
 14 discovery of admissible evidence. Nelson & Kennard is a collection law firm with a  
 15 number of clients. Letters sent by the firm to other debtors on behalf of other clients  
 16 have no bearing on this case.

17 **PLAINTIFF’S REASONS TO COMPEL FURTHER RESPONSE TO**  
 18 **DOCUMENT REQUEST NO. 13:**

19       Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to  
 20 part of a request must specify the part and permit inspection of the rest.”; *see also E.*  
 21 *& J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D.  
 22 Cal. 2006)(“If objection is made to part of an item or category, the part shall be  
 23 specified and inspection permitted of the remaining parts. The party submitting the  
 24 request may move for an order under Rule 37(a) with respect to any objection to or  
 25 other failure to respond to the request or any part thereof, or any failure to permit  
 26 inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant  
 27 to provide supplemental responses because the defendant’s original responses  
 28 contained imprecise, boilerplate objections:

1 Defendant's responses do not allow for meaningful evaluation. Plaintiff  
2 and the Court are unable to determine, with certainty, the requests for  
3 which Defendant is producing documents, the requests for which  
4 Defendant is withholding documents and on what basis, and the requests  
5 for which it has no responsive documents. Defendant cites boilerplate  
6 general objections, and does not explain why the objection applies to the  
7 response or whether documents were withheld pursuant to the stated  
8 objections.

9 Id. at \*4-5.

10 Nelson objects to Request No. 13 on the basis that it is "overbroad, unduly  
11 burdensome and oppressive" and "not relevant to the subject matter of this lawsuit,  
12 nor reasonably calculated to lead to the discovery of admissible evidence." But  
13 Nelson fails to provide any explanation for these objections. *Keith H. v. Long Beach*  
14 *Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) ("The party who resists  
15 discovery has the burden to show discovery should not be allowed, and has the  
16 burden of clarifying, explaining, and supporting its objections."). Moreover, because  
17 Nelson's response is so broad and unspecific, it is impossible to tell whether  
18 documents are being withheld on the basis of the stated objections, and/or whether  
19 responsive documents even exist. And, Nelson has not agreed to produce any  
20 responsive documents.

21 Nelson also claims that "[l]etters sent by the firm to other debtors on behalf of  
22 other clients have no bearing on this case." The Complaint, however, contains class  
23 allegations that Nelson engages in improper debt collection activities. Indeed, the  
24 Complaint includes class allegations and a class comprised of:

25 All consumers residing in the United States and abroad who, during the  
26 period within one year of the date of the filing of the complaint, were  
27 contacted or sued in the United States by either Collins Financial or Nelson  
28 & Kennard in an effort to collect an alleged debt.

Further, the Complaint contains numerous allegations that Nelson improperly  
initiates collections and unlawfully files lawsuits against debtors. In particular, the  
Complaint explicitly alleges that Nelson "fails to take the time and effort to verify the  
alleged debts or ensure that the lawsuits it files are legitimate and accurate." ¶32. The  
Complaint also specifies that Nelson "attempts to quickly obtain default judgments

1 against consumers without having original or copies of original agreements to prove  
2 the existence, terms, and amount of the debt, and in many cases without having  
3 proper information regarding the location of the debtor, thus obtaining default  
4 judgments without effectuating proper service.” ¶32. The Complaint also notes that  
5 “Nelson & Kennard rely on affidavits signed by individuals who the collection law  
6 firms know have no knowledge of the underlying facts and file verified complaints in  
7 which they attest to the truthfulness and accuracy of the information regarding the  
8 alleged debt.” ¶35. In other words, regardless of whether the alleged creditor is  
9 Collins or the alleged debtor is Tourgeman, Nelson does not verify information  
10 before it initiates collections and files lawsuits. As such, Nelson’s entire debt  
11 collection practices are at issue.

12 Since Nelson’s debt collection practices as a whole are at issue, documents  
13 related to the number of alleged debtors Nelson mailed letters to requesting payment  
14 of an alleged debt reveals the scope of Nelson’s potentially improper debt collection  
15 practices. And, the number of alleged debtors who received letters establishes the  
16 number of class members. Thus, Request No. 13 is relevant and cannot be narrowed.

17 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
18 supplemental response to Request No. 13 without the stated objections, provide a  
19 substantive response, and produce any documents improperly withheld from  
20 production.

21 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
22 **TO DOCUMENT REQUEST NO. 13:**

23 There is no basis for compelling a further response to this request because the  
24 number of debtors that received letters from Nelson & Kennard during a three-year  
25 period is not relevant to any claim at issue, nor likely to lead to the discovery of  
26 admissible evidence. Tourgeman claims that Defendants sued him for a debt that had  
27 already been paid “in full” to Dell, and that Defendants filed suit against him in the  
28 wrong judicial district. He has not alleged that any letters that he received from the

1 firm violated the FDCPA or state law. In fact, he claims he never received any letter  
2 from the firm.

3 Tourgeman suggests this request is proper because he seeks to represent a  
4 purported FDCPA class of all persons who were “contacted or sued” by Defendants,  
5 and therefore “all” of Defendants’ collection practices are at issue. He is wrong. The  
6 FDCPA does not prohibit collectors from contacting consumers, nor does it bar  
7 collectors from filing suits. Rather, the Act prohibits collectors from engaging in a  
8 specific set of unlawful collection practices. *See* 15 U.S.C. §§ 1692b-1692j. In fact,  
9 the Ninth Circuit has repeatedly recognized the Act was passed to protect consumers  
10 from serious threats, harassment, abuse and other deceptive practices utilized by  
11 unscrupulous collectors. *See* 15 U.S.C. § 1692; *Pressley v. Capital Credit and*  
12 *Collection*, 760 F.2d 922, 925 (9th Cir. 1985) (purpose of Act “is to protect  
13 consumers from a host of unfair, harassing, and deceptive debt collection practices  
14 without imposing unnecessary restrictions on ethical debt collectors”) (citation  
15 omitted). It is not a wholesale ban on any type of contact with a debtor, nor does it  
16 prohibit collectors from filing suit. The focus of the Act is prevention of deceptive  
17 and intimidating conduct by collectors that would “seriously disrupt a debtor’s life”:

18 The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors  
19 from abuse, harassment and deceptive collection practices. . . . Congress was  
20 concerned with disruptive, threatening, and dishonest tactics. The Senate  
21 Report accompanying the Act cites practices such as ‘threats of violence,  
22 telephone calls at unreasonable hours [and] misrepresentation of consumer’s  
23 legal rights.’ (Citation). **In other words, Congress seems to have  
24 contemplated the type of actions that would intimidate unsophisticated  
25 individuals and which, in the words of the Seventh Circuit, ‘would likely  
26 disrupt a debtor’s life.’** (Citation).

27 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938-39 (9th Cir. 2007) (emphasis  
28 added).

29 Tourgeman cannot seek discovery regarding every debtor “contacted or sued”  
30 by Defendants unless he identifies how the “contacts” or “suits” allegedly violated the  
31 FDCPA. In *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027 (9th Cir. 2010), the Ninth  
32 Circuit held that an allegedly false and misleading statement by a collector does not

1 violate the FDCPA unless it is “material.” *Id.* At 1033-34. A “material”  
 2 misstatement is one that is “genuinely misleading” and that “may frustrate the  
 3 consumer’s ability to intelligently choose his or her response” to the collector’s  
 4 communication. *Id.* at 1034. The Court noted that:

5       In assessing FDCPA liability, **we are not concerned with mere technical**  
 6       **falsehoods that mislead no one**, but instead with genuinely misleading  
 7       statements that may frustrate a consumer’s ability to intelligently choose his or  
 8       her response. **Here, the statement in the Complaint did not undermine**  
 9       **Donohue’s ability to intelligently choose her action concerning her debt.**

10 *Id.* at 1034 (emphasis added).

11       Tourgeman claims that Defendants sued him for a debt that was paid “in full”  
 12 and filed suit in the wrong judicial district. He says he never received any letters  
 13 from Nelson & Kennard. He is not entitled to discovery regarding the total number of  
 14 debtors that received collection letters from Nelson & Kennard. It does not relate to  
 15 any of his claims and will not identify the number of class members.

#### 16 **DOCUMENT REQUEST NO. 14:**

17       Please produce ALL DOCUMENTS that RELATE TO YOUR 1692g notices,  
 18 including but not limited to every sample collection letter YOU send to alleged  
 19 debtors.

#### 20 **RESPONSE TO DOCUMENT REQUEST NO. 14:**

21       Defendant objects to this Request on the grounds that it is overbroad, unduly  
 22 burdensome and oppressive, and to the extent that it seeks information which is not  
 23 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the  
 24 discovery of admissible evidence. Nelson & Kennard is a collection law firm with a  
 25 number of clients. There is no legitimate basis for requesting copies of section 1692g  
 26 notices sent to other debtors in connection with representing other clients.

27       Subject to and without waiving the forgoing objections or the General  
 28 Objections, Defendant will produce non-privileged documents that relate to Plaintiff,  
 his account and the defenses in this action.



**PLAINTIFF’S REASONS TO COMPEL FURTHER RESPONSE TO  
DOCUMENT REQUEST NO. 14:**

Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to part of a request must specify the part and permit inspection of the rest.”; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D. Cal. 2006)(“If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant’s original responses contained imprecise, boilerplate objections:

Defendant’s responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

*Id.* at \*4-5.

Nelson objects to Request No. 14 on the basis that it is “overbroad, unduly burdensome and oppressive” and “not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.” But Nelson fails to provide any explanation for these objections. *Keith H. v. Long Beach Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.”). Moreover, because Nelson’s response is so broad and unspecific, it is impossible to tell whether documents are being withheld on the basis of the stated objections, and/or whether responsive documents even exist.

1 Nelson also claims that “[t]here is no legitimate basis for requesting copies of  
2 section 1692g notices sent to other debtors in connection with representing clients.”  
3 Nelson is wrong. The Complaint contains class allegations that Nelson engages in  
4 improper debt collection activities. Indeed, the Complaint includes class allegations  
5 and a class comprised of:

6 All consumers residing in the United States and abroad who, during the  
7 period within one year of the date of the filing of the complaint, were  
8 contacted or sued in the United States by either Collins Financial or Nelson  
& Kennard in an effort to collect an alleged debt.

9 Further, the Complaint contains numerous allegations that Nelson improperly  
10 initiates collections and unlawfully files lawsuits against debtors. In particular, the  
11 Complaint explicitly alleges that Nelson “fails to take the time and effort to verify the  
12 alleged debts or ensure that the lawsuits it files are legitimate and accurate.” ¶32. The  
13 Complaint also specifies that Nelson “attempts to quickly obtain default judgments  
14 against consumers without having original or copies of original agreements to prove  
15 the existence, terms, and amount of the debt, and in many cases without having  
16 proper information regarding the location of the debtor, thus obtaining default  
17 judgments without effectuating proper service.” ¶32. The Complaint also notes that  
18 “Nelson & Kennard rely on affidavits signed by individuals who the collection law  
19 firms know have no knowledge of the underlying facts and file verified complaints in  
20 which they attest to the truthfulness and accuracy of the information regarding the  
21 alleged debt.” ¶35. In other words, regardless of whether the alleged creditor is  
22 Collins or the alleged debtor is Tourgeman, Nelson does not verify information  
23 before it initiates collections and files lawsuits. As such, Nelson’s entire debt  
24 collection practices are at issue.

25 Since Nelson’s debt collection practices as a whole are at issue, documents  
26 related to 1692g notices that Nelson sent to alleged debtors demonstrates Nelson’s  
27 overall debt collection techniques. This Request seeks evidence which goes to the  
28

1 heart of this dispute: whether Nelson engages in proper debt collection practices.  
2 Thus, Request No. 14 is relevant and cannot be narrowed.

3 Additionally, Nelson cannot satisfy its discovery obligations merely by  
4 producing the 1692g letter sent to Tourgeman. Rather, Nelson must produce all  
5 documents that relate to the 1692g notices it sent to alleged debtors during the class  
6 period.

7 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
8 supplemental response to Request No. 14 without the stated objections, provide a  
9 substantive response, and produce any documents improperly withheld from  
10 production.

11 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
12 **TO DOCUMENT REQUEST NO. 14:**

13 There is no basis for compelling a further response to this request because  
14 documents relating to Nelson & Kennard's section 1692g notices are not relevant to  
15 any claim at issue, nor likely to lead to the discovery of admissible evidence. In fact,  
16 the Court previously dismissed the claim that alleged Defendants had not sent  
17 Tourgeman a notice under section 1692g of the FDCPA. *See Order Granting In Part*  
18 *And Denying In Part Defendant's Motion To Dismiss And Motion To Strike* (Docket  
19 58), at 6. Tourgeman's Second Amended Complaint does not allege that Defendants  
20 sent him any collection letters.

21 There is no basis for seeking discovery on a dismissed claim. The motion  
22 should be denied as to this request.

23  
24 **DOCUMENT REQUEST NO. 15:**

25 Please produce ALL DOCUMENTS RELATING TO the procedures and  
26 guidelines YOU set to collect debts.

27 **RESPONSE TO DOCUMENT REQUEST NO. 15:**

28 Defendant objects to this request on the grounds that it is vague and ambiguous

as to the term “procedures and guidelines.” Defendant objects to this Request on the grounds that, as understood by Defendant, it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Nelson & Kennard is a collection law firm, and virtually every piece of paper or electronic document it maintains could arguably “relate” to the collection process and could be construed as responsive.

Subject to and without waiving the forgoing objections or the General Objections, upon entry of a protective order by the Court, Defendant will produce non-privileged documents that relate to Plaintiff, his account, and the defenses in this action.

**PLAINTIFF’S REASONS TO COMPEL FURTHER RESPONSE TO  
DOCUMENT REQUEST NO. 15:**

Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to part of a request must specify the part and permit inspection of the rest.”; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D. Cal. 2006)(“If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant’s original responses contained imprecise, boilerplate objections:

Defendant’s responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

*Id.* at \*4-5.

1 Nelson objects to Request No. 15 on the basis that it is “overbroad, unduly  
2 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,  
3 nor reasonably calculated to lead to the discovery of admissible evidence.” But  
4 Nelson fails to provide any explanation for these objections. *Keith H. V. Long Beach*  
5 *Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists  
6 discovery has the burden to show discovery should not be allowed, and has the  
7 burden of clarifying, explaining, and supporting its objections.”). Moreover, because  
8 Nelson’s response is so broad and unspecific, it is impossible to tell whether  
9 documents are being withheld on the basis of the stated objections, and/or whether  
10 responsive documents even exist.

11 Nelson objects to document Request No. 15 on the basis that the term  
12 “procedures and guidelines” is vague and ambiguous. Nelson, however, has failed to  
13 exercise reason and common sense to attribute ordinary definitions to terms and  
14 phrases utilized in discovery. *Santana Row Hotel Partners, L.P. v. Zurich Am. Ins.*  
15 *Co.*, 2007 U.S. Dist. LEXIS 31688 (N.D. Cal. 2007). “Procedures” and “policies” are  
16 common English words that should not preclude Nelson from providing a substantive  
17 response. And, Nelson has offered little to no meaningful facts to support the stated  
18 objections. Thus, this boilerplate objection cannot be sustained.

19 Nelson also claims that this Request potentially seeks “virtually every piece of  
20 paper or electronic document it maintains.” Not true. This Request only seeks  
21 documents related to Nelson’s procedures and guidelines for collecting debts.

22 Finally, Nelson’s offer to produce only documents related to Tourgeman, his  
23 account, and the defenses in this action narrows the scope of the Request and is  
24 insufficient. This is a class action lawsuit alleging Nelson improperly initiated debt  
25 collections and unlawfully filed lawsuits against numerous debtors. Since Nelson’s  
26 debt collection procedures and guidelines may show the extent of Nelson’s debt  
27 collection practices, these documents are relevant and must be produced.

1 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
2 supplemental response to Request No. 15 without the stated objections, provide a  
3 substantive response, and produce any documents improperly withheld from  
4 production.

5 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
6 **TO DOCUMENT REQUEST NO. 15:**

7 Defendant has responded to this request, has agreed to produce responsive  
8 documents, and has produced responsive documents. Defendant has also provided  
9 documents and detailed interrogatory responses describing the process used in  
10 connection with filing suit, its skip tracing procedures, and the methods used to  
11 confirm that Defendant files suit against the correct debtor and in the correct judicial  
12 district. Defendant also agreed to produce for deposition the attorney who prepared  
13 the lawsuit that was filed against Tourgeman. It is unclear why Tourgeman has filed  
14 a motion compelling further responses. No order compelling further responses is  
15 proper.

16  
17 **DOCUMENT REQUEST NO. 17:**

18 Please produce ALL DOCUMENTS that RELATE TO YOUR policy for the  
19 retention and destruction of records, DOCUMENTS, or files from July 31, 2007 to  
20 the present.

21 **RESPONSE TO DOCUMENT REQUEST NO. 17:**

22 Defendant objects to this Request on the grounds that it is overbroad, unduly  
23 burdensome and oppressive, and seeks information which is not relevant to the  
24 subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of  
25 admissible evidence.

26 Subject to and without waiving the forgoing objections or the General  
27 Objections, Defendant will produce non-privileged documents in its possession,  
28 custody or control, to the extent any exist, that are responsive to this Request.



**PLAINTIFF’S REASONS TO COMPEL FURTHER RESPONSE TO  
DOCUMENT REQUEST NO. 17:**

Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to part of a request must specify the part and permit inspection of the rest.”; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D. Cal. 2006)(“If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant’s original responses contained imprecise, boilerplate objections:

Defendant’s responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

*Id.* at \*4-5.

Nelson objects to Request No. 17 on the basis that it is “overbroad, unduly burdensome and oppressive” and “not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.” But Nelson fails to provide any explanation for these objections. *Keith H. v. Long Beach Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.”). Moreover, because Nelson’s response is so broad and unspecific, it is impossible to tell whether documents are being withheld on the basis of the stated objections, and/or whether responsive documents even exist.

1 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
 2 supplemental response to Request No. 17 without the stated objections, provide a  
 3 substantive response, and produce any documents improperly withheld from  
 4 production.

5 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 6 **TO DOCUMENT REQUEST NO. 17:**

7 The motion to compel should be denied as to this request because Plaintiff has  
 8 never made any attempt to meet and confer regarding the request before filing the  
 9 motion. No party may move for an order compelling further discovery until after the  
 10 party has made a good faith attempt to meet and confer to resolve the dispute without  
 11 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this  
 12 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) (“The motion must  
 13 include a certification that the movant has in good faith conferred or attempted to  
 14 confer with the person or party failing to make disclosure or discovery in an effort to  
 15 obtain it without court action.”); Local Rule 26.1a (“The court will entertain no  
 16 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have  
 17 previously met and conferred on **all disputed issues.**”).

18 Despite these clear requirements, this is one of eighteen separate discovery  
 19 requests that were never discussed in any letter or any phone call by counsel for  
 20 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support  
 21 Of Opposition To Motion To Compel And Motion For Protective Order And Award  
 22 Of Sanctions (“Narita Decl.”), ¶¶ 3-6, Exs. A and B. Defendants specifically  
 23 informed counsel for Tourgeman that the motion was improper because no meet and  
 24 confer had been conducted, but Tourgeman’s counsel refused to take the motion off  
 25 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

26 Since no meet and confer was conducted as to “all disputed issues” as required  
 27 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare  
 28 minimum, the Court should deny the motion as to all of the eighteen discovery

requests, including this one, that were never discussed by counsel. *See Presidio Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, \*3-4 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and confer conducted in advance of motion). Counsel for Tourgeman should also be sanctioned for their deliberate refusal to comply with the requirements of the Federal Rules and the Local Rules.

**DOCUMENT REQUEST NO. 19:**

Please produce ALL DOCUMENTS relating to the maintenance of procedures by NELSON adopted to avoid any violation of the Fair Debt Collection Practices Act and the Rosenthal Act.

**RESPONSE TO DOCUMENT REQUEST NO. 19:**

Defendant objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the forgoing objections or the General Objections, upon entry of a protective order by the Court, Defendant will produce non-privileged documents that relate to the bona fide error defense in this action.

**PLAINTIFF'S REASONS TO COMPEL FURTHER RESPONSE TO DOCUMENT REQUEST NO. 19:**

Federal Rule of Civil Procedure 34(b)(2)(C) requires that "[a]n objection to part of a request must specify the part and permit inspection of the rest."; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4 (E.D. Cal. 2006) ("If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit

inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant’s original responses contained imprecise, boilerplate objections:

Defendant’s responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

Id. at \*4-5.

Nelson objects to Request No. 19 on the basis that it is “overbroad, unduly burdensome and oppressive” and “not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.” But Nelson fails to provide any explanation for these objections. *Keith H. V. Long Beach Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.”). Moreover, because Nelson’s response is so broad and unspecific, it is impossible to tell whether documents are being withheld on the basis of the stated objections, and/or whether responsive documents even exist.

Nelson also improperly attempts to limit Request No. 19 to documents that also relate to the bona fide error defense. This response is insufficient and does not satisfy Nelson’s discovery obligations. Request No. 19 seeks documents related to Nelson’s policies for avoiding violations of the Fair Debt Collection Practices Act and the Rosenthal Act. Put differently, this Request seeks information on how Nelson trains its employees to collect debts and is not limited to just the bona fide error defense. Nelson cannot shelter its debt collection techniques from scrutiny by producing only documents related to the bona fide error defense.

Accordingly, Tourgeman requests that this Court order Nelson to provide a supplemental response to Request No. 19 without the stated objections, provide a

1 substantive response, and produce any documents improperly withheld from  
2 production.

3 **PLAINTIFF’S REASONS TO COMPEL FURTHER RESPONSE TO**  
4 **DOCUMENT REQUEST NO. 19:**

5 The FDCPA and Rosenthal Act both provide that even if a plaintiff proves a  
6 violation, the defendant is not liable if it can demonstrate that the violation was not  
7 intentional, and that it occurred despite the maintenance by defendant of procedures  
8 reasonably adapted to avoid the error. This is known as the “bona fide error”  
9 defense.<sup>3</sup>

10 Defendants have filed a motion for summary judgment which explains that  
11 even if there is evidence that Tourgeman previously paid his debt, Defendants are not  
12 liable because they employed extensive procedures to prevent inadvertent attempts to  
13 collect on accounts that had been previously paid. Nelson & Kennard also has  
14 procedures designed to ensure that debtors were sued in the correct venue. The  
15 pending summary judgment motion asserts that no liability should attach given the  
16 “bona fide error” defense.

17 “The bona fide error defense is an affirmative defense that insulates debt  
18 collectors from liability even when they have violated the FDCPA.” *Johnson v.*  
19 *Riddle*, 443 F.3d 723, 727 (10th Cir. 2006). If the defendant shows by a  
20 preponderance of the evidence that a violation of the FDCPA was not intentional, and  
21 resulted despite procedures that were reasonably adapted to prevent the error, there is

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22  
23 <sup>3</sup> See 15 U.S.C. § 1692k(c) (“A debt collector may not be held liable in any action  
24 brought under this title if the debt collector shows by a preponderance of evidence that  
25 the violation was not intentional and resulted from a bona fide error notwithstanding the  
26 maintenance of procedures reasonably adapted to avoid any such error.”); Cal. Civ.  
27 Code § 1788.30(e) (“A debt collector shall have no civil liability to which such debt  
28 collector might otherwise be subject for a violation of this title, if the debt collector  
shows by a preponderance of evidence that the violation was not intentional and resulted  
notwithstanding the maintenance of procedures reasonably adapted to avoid any such  
violation.”).

no liability. *See* 15 U.S.C. § 1692k(c); *see also Clark v. Capital Credit Coll. Servs., Inc.*, 460 F.3d 1162, 1177 (9th Cir. 2006).

To prevail on the “bona fide error” defense, Defendants need only show that their procedures were “reasonably adapted” to avoid the error. *See, e.g., Ross v. RJM Acquisitions Funding LLC*, 480 F.3d 493, 497-98 (7th Cir. 2007) (rejecting notion that collector must prove that its procedures were “state of the art” to prevail); *Jenkins v. Heintz*, 124 F.3d 824, 833-34 (7th Cir. 1997) (law firm procedures held reasonable despite its failure to investigate the legality of collecting forced placed insurance premiums); *Lewis v. ACB Bus. Servs.*, 135 F.3d 389 (6th Cir. 1998) (agency reasonably relied upon on erroneous information supplied by client); *Smith v. Transworld Sys., Inc.*, 953 F.2d 1025, 1031 (6th Cir. 1992) (manual and employee affidavits showed that the further collection efforts occurred as a result of an error).

Defendant has already agreed to produce, and has produced, documents relating to the “bona fide error defense” that it has asserted. There is no basis for Tourgeman to seek a further response with respect to this request.

#### **DOCUMENT REQUEST NO. 20:**

Please produce ALL material, including video and audio tapes, pertaining to training by or for NELSON and its employees regarding the Fair Debt Collection Practices Act and the Rosenthal Act.

#### **RESPONSE TO DOCUMENT REQUEST NO. 20:**

Defendant objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the forgoing objections or the General Objections, upon entry of a protective order by the Court, Defendant will produce non-privileged documents that relate to the bona fide error defense in this action.



**PLAINTIFF’S REASONS TO COMPEL FURTHER RESPONSE TO  
DOCUMENT REQUEST NO. 20:**

Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to part of a request must specify the part and permit inspection of the rest.”; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D. Cal. 2006)(“If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant’s original responses contained imprecise, boilerplate objections:

Defendant’s responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

*Id.* at \*4-5.

Nelson objects to Request No. 19 on the basis that it is “overbroad, unduly burdensome and oppressive” and “not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.” But Nelson fails to provide any explanation for these objections. *Keith H. v. Long Beach Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.”). Moreover, because Nelson’s response is so broad and unspecific, it is impossible to tell whether documents are being withheld on the basis of the stated objections, and/or whether responsive documents even exist.

1 Nelson also improperly attempts to limit Request No. 20 to documents that  
 2 relate to the bona fide error defense. This response is insufficient and does not satisfy  
 3 Nelson's discovery obligations. Request No. 20 seeks training materials regarding  
 4 the Fair Debt Collection Practices Act and the Rosenthal Act. In other words, this  
 5 Request seeks information on how Nelson trains its employees to collect debts and is  
 6 not limited to just the bona fide error defense. Nelson cannot shelter its debt  
 7 collection techniques from scrutiny by producing only documents related to the bona  
 8 fide error defense.

9 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
 10 supplemental response to Request No. 20 without the stated objections, provide a  
 11 substantive response, and produce any documents improperly withheld from  
 12 production.

13 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 14 **TO DOCUMENT REQUEST NO. 20:**

15 The FDCPA and Rosenthal Act both provide that even if a plaintiff proves a  
 16 violation, the defendant is not liable if it can demonstrate that the violation was not  
 17 intentional, and that it occurred despite the maintenance by defendant of procedures  
 18 reasonably adapted to avoid the error. This is known as the "bona fide error"  
 19 defense.<sup>4</sup>

20 Defendants have filed a motion for summary judgment which explains that  
 21 even if there is evidence that Tourgeman previously paid his debt, Defendants are not

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23 <sup>4</sup> See 15 U.S.C. § 1692k(c) ("A debt collector may not be held liable in any action  
 24 brought under this title if the debt collector shows by a preponderance of evidence that  
 25 the violation was not intentional and resulted from a bona fide error notwithstanding the  
 26 maintenance of procedures reasonably adapted to avoid any such error."); Cal. Civ.  
 27 Code § 1788.30(e) ("A debt collector shall have no civil liability to which such debt  
 28 collector might otherwise be subject for a violation of this title, if the debt collector  
 shows by a preponderance of evidence that the violation was not intentional and resulted  
 notwithstanding the maintenance of procedures reasonably adapted to avoid any such  
 violation.").

1 liable because they employed extensive procedures to prevent inadvertent attempts to  
 2 collect on accounts that had been previously paid. Nelson & Kennard also has  
 3 procedures designed to ensure that debtors were sued in the correct venue. The  
 4 pending summary judgment motion asserts that no liability should attach given the  
 5 “bona fide error” defense.

6 “The bona fide error defense is an affirmative defense that insulates debt  
 7 collectors from liability even when they have violated the FDCPA.” *Johnson v.*  
 8 *Riddle*, 443 F.3d 723, 727 (10th Cir. 2006). If the defendant shows by a  
 9 preponderance of the evidence that a violation of the FDCPA was not intentional, and  
 10 resulted despite procedures that were reasonably adapted to prevent the error, there is  
 11 no liability. *See* 15 U.S.C. § 1692k(c); *see also Clark v. Capital Credit Coll. Servs.,*  
 12 *Inc.*, 460 F.3d 1162, 1177 (9th Cir. 2006).

13 To prevail on the “bona fide error” defense, Defendants need only show that  
 14 their procedures were “reasonably adapted” to avoid the error. *See, e.g., Ross v. RJM*  
 15 *Acquisitions Funding LLC*, 480 F.3d 493, 497-98 (7th Cir. 2007) (rejecting notion  
 16 that collector must prove that its procedures were “state of the art” to prevail);  
 17 *Jenkins v. Heintz*, 124 F.3d 824, 833-34 (7th Cir. 1997) (law firm procedures held  
 18 reasonable despite its failure to investigate the legality of collecting forced placed  
 19 insurance premiums); *Lewis v. ACB Bus. Servs.*, 135 F.3d 389 (6th Cir. 1998) (agency  
 20 reasonably relied upon on erroneous information supplied by client); *Smith v.*  
 21 *Transworld Sys., Inc.*, 953 F.2d 1025, 1031 (6th Cir. 1992) (manual and employee  
 22 affidavits showed that the further collection efforts occurred as a result of an error).

23 Defendant has already agreed to produce, and has produced, documents  
 24 relating to the “bona fide error defense” that it has asserted. There is no basis for  
 25 Tourgeman to seek a further response with respect to this request.

26  
 27 **DOCUMENT REQUEST NO. 21:**

28 Please produce ALL DOCUMENTS RELATING TO insurance policies

1 covering NELSON for violation of the Fair Debt Collection Practices Act and the  
2 Rosenthal Act.

3 **RESPONSE TO DOCUMENT REQUEST NO. 21:**

4 Defendant objects to this Request on the grounds that it is overbroad, unduly  
5 burdensome and oppressive, and to the extent that it seeks information which is not  
6 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the  
7 discovery of admissible evidence. Nelson & Kennard has not tendered the defense of  
8 this action to any insurance carrier so there are no relevant responsive documents.

9 **PLAINTIFF'S REASONS TO COMPEL FURTHER RESPONSE TO**  
10 **DOCUMENT REQUEST NO. 21:**

11 Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to  
12 part of a request must specify the part and permit inspection of the rest.”; *see also E.*  
13 *& J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D.  
14 Cal. 2006)(“If objection is made to part of an item or category, the part shall be  
15 specified and inspection permitted of the remaining parts. The party submitting the  
16 request may move for an order under Rule 37(a) with respect to any objection to or  
17 other failure to respond to the request or any part thereof, or any failure to permit  
18 inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant  
19 to provide supplemental responses because the defendant’s original responses  
20 contained imprecise, boilerplate objections:

21 Defendant’s responses do not allow for meaningful evaluation. Plaintiff  
22 and the Court are unable to determine, with certainty, the requests for  
23 which Defendant is producing documents, the requests for which  
24 Defendant is withholding documents and on what basis, and the requests  
25 for which it has no responsive documents. Defendant cites boilerplate  
general objections, and does not explain why the objection applies to the  
response or whether documents were withheld pursuant to the stated  
objections.  
Id. at \*4-5.

26 Nelson objects to Request No. 21 on the basis that it is “overbroad, unduly  
27 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,  
28 nor reasonably calculated to lead to the discovery of admissible evidence.” But

1 Nelson fails to provide any explanation for these objections. *Keith H. V. Long Beach*  
2 *Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists  
3 discovery has the burden to show discovery should not be allowed, and has the  
4 burden of clarifying, explaining, and supporting its objections.”). Moreover, because  
5 Nelson’s response is so broad and unspecific, it is impossible to tell whether  
6 documents are being withheld on the basis of the stated objections, and/or whether  
7 responsive documents even exist. And, Nelson has not agreed to provide any  
8 responsive documents.

9 Nelson also refuses to produce documents to Request No. 21, contending  
10 Nelson “has not tendered the defense of this action to any insurance carrier so there  
11 are no relevant responsive documents.” But it is immaterial whether Nelson has  
12 tendered the defense of this action to any insurance carrier. The crux of the  
13 Complaint is that Nelson violated the Fair Debt Collection Practices Act. Documents  
14 that establish culpability or relate to indemnification for those violations are relevant.  
15 If Nelson maintains an insurance policy that covers these violations, that is enough to  
16 render the documents relevant.

17 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
18 supplemental response to Request No. 21 without the stated objections, provide a  
19 substantive response, and produce any documents improperly withheld from  
20 production.

21 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
22 **TO DOCUMENT REQUEST NO. 21:**

23 Nelson & Kennard has not tendered the defense of this action to any insurance  
24 carrier. There is no insurance policy that could have any bearing on this case. There  
25 is no basis for compelling the firm to produce insurance policies that have bearing on  
26 this dispute or its resolution.

**DOCUMENT REQUEST NO. 23:**

Please produce ALL DOCUMENTS that RELATE TO NELSON's procedures to verify alleged debts when received from a debt collector client, including but not limited to, COLLINS.

**RESPONSE TO DOCUMENT REQUEST NO. 23:**

Defendant objects to this Request on the grounds that it is vague and ambiguous as to the terms "verify alleged debts." Nelson & Kennard is a collection law firm. To the extent that it understands the term "verify" as used in this request, the firm does not have a legal obligation to independently verify the debts that are forwarded by its clients. Defendant also objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Nelson & Kennard has a number of clients. There is no legitimate basis for seeking discovery concerning the handling of accounts forwarded by other clients of the firm.

Subject to and without waiving the forgoing objections or the General Objections, upon entry of a protective order by the Court, Defendant will produce non-privileged documents that relate to Plaintiff, his account, and the defenses in this action.

**PLAINTIFF'S REASONS TO COMPEL FURTHER RESPONSE TO DOCUMENT REQUEST NO. 23:**

Federal Rule of Civil Procedure 34(b)(2)(C) requires that "[a]n objection to part of a request must specify the part and permit inspection of the rest."; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4 (E.D. Cal. 2006) ("If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit



inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant’s original responses contained imprecise, boilerplate objections:

Defendant’s responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

*Id.* at \*4-5.

Nelson objects to Request No. 23 on the basis that it is “overbroad, unduly burdensome and oppressive” and “not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.” But Nelson fails to provide any explanation for these objections. *Keith H. V. Long Beach Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.”). Moreover, because Nelson’s response is so broad and unspecific, it is impossible to tell whether documents are being withheld on the basis of the stated objections, and/or whether responsive documents even exist.

Nelson objects to document Request No. 23 on the basis that the term “verify” is vague and ambiguous. Nelson, however, has failed to exercise reason and common sense to attribute ordinary definitions to terms and phrases utilized in discovery. *Santana Row Hotel Partners, L.P. v. Zurich Am. Ins. Co.*, 2007 U.S. District. LEXIS 31688 (N.D. Cal. 2007). The term “verify” is a common English word that should not preclude Nelson from providing a meaningful response. Because Nelson has offered little to no meaningful facts to support the stated objection, this boilerplate objection cannot be sustained.

Nelson also contends there is no legitimate basis for Request No. 23 and offers to produce only documents related to Tourgeman, his account, and the defenses in

1 this action. The Complaint, however, contains class allegations that Nelson engages  
2 in improper debt collection activities. Indeed, the Complaint includes class  
3 allegations and a class comprised of:

4 All consumers residing in the United States and abroad who, during the  
5 period within one year of the date of the filing of the complaint, were  
6 contacted or sued in the United States by either Collins Financial or Nelson  
& Kennard in an effort to collect an alleged debt.

7 Further, the Complaint contains numerous allegations that Nelson improperly  
8 initiates collections and unlawfully files lawsuits against debtors. In particular, the  
9 Complaint explicitly alleges that Nelson “fails to take the time and effort to verify the  
10 alleged debts or ensure that the lawsuits it files are legitimate and accurate.” ¶32. The  
11 Complaint also specifies that Nelson “attempts to quickly obtain default judgments  
12 against consumers without having original or copies of original agreements to prove  
13 the existence, terms, and amount of the debt, and in many cases without having  
14 proper information regarding the location of the debtor, thus obtaining default  
15 judgments without effectuating proper service.” ¶32. The Complaint also notes that  
16 “Nelson & Kennard rely on affidavits signed by individuals who the collection law  
17 firms know have no knowledge of the underlying facts and file verified complaints in  
18 which they attest to the truthfulness and accuracy of the information regarding the  
19 alleged debt.” ¶35. In other words, regardless of whether the alleged creditor is  
20 Collins or the alleged debtor is Tourgeman, Nelson does not verify information  
21 before it initiates collections and files lawsuits. As such, Nelson’s entire debt  
22 collection practices are at issue.

23 Request No. 23 seeks documents related to Nelson’s procedures for verifying  
24 alleged debts received from debt collector clients. Since Nelson’s debt collection  
25 practices are in question, this Request is relevant to showing the process by which  
26 Nelson files debt related lawsuits and whether Nelson takes the time to ensure the  
27 alleged debts are legitimate.  
28

1 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
2 supplemental response to Request No. 23 without the stated objections, provide a  
3 substantive response, and produce any documents improperly withheld from  
4 production.

5 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
6 **TO DOCUMENT REQUEST NO. 23:**

7 Discovery about Defendant's "investigation" of debts is not proper because the  
8 FDCPA does not impose a duty on collectors to independently investigate and verify  
9 debts before the initiate the collection process. Even though the law does not impose  
10 such a duty, Defendants have no business interest in seeking to collect money from  
11 debtors that do not owe it. Defendants do have procedures in place to prevent any  
12 attempt to collect debts that have already been paid, and they have provided this  
13 information to Tourgeman already. There is no basis for compelling a further  
14 response.

15 The FDCPA does not require a debt collector to independently verify the  
16 validity of a debt before attempting to collect it. Instead, the FDCPA allows a  
17 collector to assume the debt is valid, unless the debtor submits a timely dispute to the  
18 collector. *See* 15 U.S.C. § 1692g(a)(3) (collector must notify consumer that debt will  
19 be assumed valid unless consumer disputes validity of debt within 30 days of receipt  
20 of notice); *Smith v. Transworld Sys., Inc.*, 953 F.2d 1025, 1032 (6th Cir. 1992)  
21 (FDCPA does not require collector to independently investigate debt referred for  
22 collection); *Hyman v. Tate*, 362 F.3d 965, 968 (7th Cir. 2004) (FDCPA does not  
23 require collector to independently verify validity of debt to qualify for "bona fide  
24 error" defense). Here, non-party Paragon Way, Inc. and Nelson & Kennard both sent  
25  
26  
27  
28

1 notices to Tourgeman advising him of his right to dispute the debt, but Tourgeman  
2 never responded.<sup>5</sup>

3 If Tourgeman is arguing that discovery about Defendants' "investigating" of  
4 debts is relevant to show that Defendants did not have possession of sufficient  
5 evidence to prove their case before the collection suit was filed, his requests are  
6 improper as this Court has already rejected this theory of recovery.<sup>6</sup>

7 Defendants have provided discovery on the procedures used to ensure that they  
8 are filing suit on valid debts and are filing suit in the correct judicial district. The  
9 motion should be denied as to this request.

10  
11 **DOCUMENT REQUEST NO. 25:**

12 Please produce ALL DOCUMENTS that RELATE TO NELSON's policies and  
13 procedures for settling alleged debts with debtors.

14 **RESPONSE TO DOCUMENT REQUEST NO. 25:**

15 Defendant objects to this Request on the grounds that it is vague and  
16 ambiguous as to the terms "policies and procedures for settling." Defendant also  
17 objects to this Request on the grounds that it is overbroad, unduly burdensome and  
18 oppressive, and to the extent that it seeks information which is not relevant to the  
19 subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of  
20 admissible evidence. Nelson & Kennard is a collection law firm with a number of  
21

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22 <sup>5</sup> See Declaration of Howard Knauer In Support Of Motion For Summary  
23 Judgment (Docket 75), ¶ 5, Ex. B; Declaration of Jonathan E. Ayers In Support Of  
24 Motion For Summary Judgment (Docket 73), ¶ 4, Ex. B.

25 <sup>6</sup> See Order Granting In Part And Denying In Part Defendant's Motion To Dismiss  
26 And Motion To Strike (Docket 58), at 7 ("[T]he filing of a lawsuit, even if a plaintiff  
27 does not have the means of proving the case at filing or does not ultimately prevail, has  
28 not by itself been considered harassment or abuse under the FDCPA. See, e.g., *Heintz*  
*v. Jenkins*, 514 U.S. 291, 296 (1995); *Harvey v. Great Seneca Financial Corp.*, 453 F.3d  
324, 330 (6th Cir. 2006).

different clients. Cases are settled on an individual basis depending on the facts and circumstances that are present at the time the settlement is consummated. There is no legitimate basis for seeking discovery regarding the settlement of debts that are forwarded to the firm by other clients.

**PLAINTIFF’S REASONS TO COMPEL FURTHER RESPONSE TO  
DOCUMENT REQUEST NO. 25:**

Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to part of a request must specify the part and permit inspection of the rest.”; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D. Cal. 2006)(“If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant’s original responses contained imprecise, boilerplate objections:

Defendant’s responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

*Id.* at \*4-5.

Nelson objects to Request No. 25 on the basis that it is “overbroad, unduly burdensome and oppressive” and “not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.” But Nelson fails to provide any explanation for these objections. *Keith H. V. Long Beach Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.”). Moreover, because

1 Nelson's response is so broad and unspecific, it is impossible to tell whether  
2 documents are being withheld on the basis of the stated objections, and/or whether  
3 responsive documents even exist. And, Nelson has not agreed to produce any  
4 responsive documents.

5 Nelson objects to document Request No. 25 on the basis that the term "policies  
6 and procedures for settling" is vague and ambiguous. Nelson, however, has failed to  
7 exercise reason and common sense to attribute ordinary definitions to terms and  
8 phrases utilized in discovery. *Santana Row Hotel Partners, L.P. v. Zurich Am. Ins.*  
9 *Co.*, 2007 U.S. Dist. LEXIS 31688 (N.D. Cal 2007). "Policies" and "procedures" are  
10 common English words that should not preclude Nelson from providing a substantive  
11 response. Because Nelson has offered little to no meaningful facts to support the  
12 stated objection, this boilerplate objection cannot be sustained.

13 Nelson also contends "[t]here is no legitimate basis for seeking discovery  
14 regarding the settlement of debts that are forwarded to the firm by other clients."  
15 Nelson is wrong. The Complaint contains class allegations that Nelson engages in  
16 improper debt collection activities. Indeed, the Complaint includes class allegations  
17 and a class comprised of:

18 All consumers residing in the United States and abroad who, during the  
19 period within one year of the date of the filing of the complaint, were  
20 contacted or sued in the United States by either Collins Financial or Nelson  
& Kennard in an effort to collect an alleged debt.

21 Further, the Complaint contains numerous allegations that Nelson improperly  
22 initiates collections and unlawfully files lawsuits against debtors. In particular, the  
23 Complaint explicitly alleges that Nelson "fails to take the time and effort to verify the  
24 alleged debts or ensure that the lawsuits it files are legitimate and accurate." ¶32. The  
25 Complaint also specifies that Nelson "attempts to quickly obtain default judgments  
26 against consumers without having original or copies of original agreements to prove  
27 the existence, terms, and amount of the debt, and in many cases without having  
28 proper information regarding the location of the debtor, thus obtaining default



1 judgments without effectuating proper service.” ¶32. The Complaint also notes that  
 2 “Nelson & Kennard rely on affidavits signed by individuals who the collection law  
 3 firms know have no knowledge of the underlying facts and file verified complaints in  
 4 which they attest to the truthfulness and accuracy of the information regarding the  
 5 alleged debt.” ¶35. In other words, regardless of whether the alleged creditor is  
 6 Collins or the alleged debtor is Tourgeman, Nelson does not verify information  
 7 before it initiates collections and files lawsuits. As such, Nelson’s entire debt  
 8 collection practices are at issue.

9 Request No. 25 seeks documents related to Nelson’s policies and procedures  
 10 for settling alleged debts with debtors. The manner in which Nelson settles alleged  
 11 debts with debtors reflects on its debt collection practices. Since Nelson’s debt  
 12 collection practices are in question, this Request is relevant and goes to the heart of  
 13 the case.

14 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
 15 supplemental response to Request No. 25 without the stated objections, provide a  
 16 substantive response, and produce any documents improperly withheld from  
 17 production.

18 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 19 **TO DOCUMENT REQUEST NO. 25:**

20 There is no basis for seeking to compel documents and information concerning  
 21 Defendants’ policies for settling debts. This discovery has nothing to do with this  
 22 case. Tourgeman does not even allege that Defendants violated the FDCPA in  
 23 connection with settling any debt.

24 Even if he had, there is nothing unlawful about settling debts. To the contrary,  
 25 cases have repeatedly recognized that the FDCPA encourages settlement of debts  
 26 without litigation. “There is nothing improper about making a settlement offer.  
 27 (Citation). Forbidding them would force honest debt collectors seeking a peaceful  
 28 resolution of the debt to file suit in order to advance efforts to resolve the debt-

1 something that is clearly at odds with the language and purpose of the [Act].”  
 2 *Campuzano-Burgos v. Midland Credit Management, Inc.*, 550 F. 3d 294, 299 (3d Cir.  
 3 2008) (citing *Evory v. RJM Acquisitions Funding, LLC*, 505 F. 3d 769 (7th Cir. 2007)  
 4 and *Lewis v. ACB Bus. Servs., Inc.*, 135 F. 3d 389, 399 (6th Cir. 1998).

5 The motion must be denied as to these requests seeking information relating to  
 6 Defendants policies and procedures relating to settling debts.

7  
 8 **DOCUMENT REQUEST NO. 26:**

9 Please produce ALL DOCUMENTS that RELATE TO NELSON’s revenue for  
 10 each calendar year from 2005 to the present, including but not limited to financial  
 11 summaries, period reports, tax returns and financial statements.

12 **RESPONSE TO DOCUMENT REQUEST NO. 26:**

13 Defendant objects to this Request on the grounds that it is overbroad, unduly  
 14 burdensome and oppressive, and to the extent that it seeks information which is not  
 15 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the  
 16 discovery of admissible evidence. Defendant further objects to this Request to the  
 17 extent that it seeks confidential financial information.

18 **PLAINTIFF’S REASONS TO COMPEL FURTHER RESPONSE TO**  
 19 **DOCUMENT REQUEST NO. 26:**

20 Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to  
 21 part of a request must specify the part and permit inspection of the rest.”; *see also E.*  
 22 *& J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D.  
 23 Cal. 2006)(“If objection is made to part of an item or category, the part shall be  
 24 specified and inspection permitted of the remaining parts. The party submitting the  
 25 request may move for an order under Rule 37(a) with respect to any objection to or  
 26 other failure to respond to the request or any part thereof, or any failure to permit  
 27 inspection as requested.”). *In E. & J. Gallo Winery*, the court ordered the defendant  
 28

1 to provide supplemental responses because the defendant's original responses  
2 contained imprecise, boilerplate objections:

3 Defendant's responses do not allow for meaningful evaluation. Plaintiff  
4 and the Court are unable to determine, with certainty, the requests for  
5 which Defendant is producing documents, the requests for which  
6 Defendant is withholding documents and on what basis, and the requests  
7 for which it has no responsive documents. Defendant cites boilerplate  
8 general objections, and does not explain why the objection applies to the  
9 response or whether documents were withheld pursuant to the stated  
10 objections.

11 Id. at \*4-5.

12 Nelson objects to Request No. 26 on the basis that it is "overbroad, unduly  
13 burdensome and oppressive" and "not relevant to the subject matter of this lawsuit,  
14 nor reasonably calculated to lead to the discovery of admissible evidence." But  
15 Nelson fails to provide any explanation for these objections. *Keith H. v. Long Beach*  
16 *Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) ("The party who resists  
17 discovery has the burden to show discovery should not be allowed, and has the  
18 burden of clarifying, explaining, and supporting its objections."). Moreover, because  
19 Nelson's response is so broad and unspecific, it is impossible to tell whether  
20 documents are being withheld on the basis of the stated objections, and/or whether  
21 responsive documents even exist. And, Nelson has not agreed to produce any  
22 responsive documents.

23 Documents related to Nelson's revenues establish how debt collection activities  
24 were conducted and how Nelson was incentivized to pursue certain alleged debtors.  
25 To the extent Nelson contends this Request seeks confidential information,  
26 Tourgeman has offered to sign a protective Order. Nelson ignored this offer.

27 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
28 supplemental response to Request No. 26 without the stated objections, provide a  
substantive response, and produce any documents improperly withheld from  
production.

**DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED  
TO DOCUMENT REQUEST NO. 26:**

There is no basis for compelling production of the private financial information sought by this request. There is no punitive damages claim in this case. Financial statements and tax returns will not show how collectors are "incentivized" to collect debts, nor is that an issue in the case. The request for a further response should be denied.

**DOCUMENT REQUEST NO. 28:**

Please produce ALL DOCUMENTS that RELATE TO NELSON's processes for receiving the transmitted account information of debtors from COLLINS.

**RESPONSE TO DOCUMENT REQUEST NO. 28:**

Defendant objects to this Request on the grounds that it is vague and ambiguous as to the term "processes for receiving the transmitted account information of debtors." As Defendant understands the request, there are no responsive documents.

**PLAINTIFF'S REASONS TO COMPEL FURTHER RESPONSE TO  
DOCUMENT REQUEST NO. 28:**

Nelson objects to document Request No. 28 on the basis that the term "processes for receiving the transmitted account information of debtors" is vague and ambiguous. Nelson, however, has failed to exercise reason and common sense to attribute ordinary definitions to terms and phrases utilized in discovery. *Santana Row Hotel Partners, L.P. v. Zurich Am. Ins. Co.*, 2007 U.S. Dist. LEXUS 31688 (N.D. Cal 2007). Because Nelson has offered little or no meaningful facts to support the stated objection, this boilerplate objection cannot be sustained.

Finally, Nelson's contention that no responsive documents exist is dubious. Collins is an entity specializing in debt collections while Nelson is a law firm that specializes in debt collection lawsuits. The two firms are frequently in contact as

1 Collins regularly utilizes Nelson's services and transmits debtor account information.  
 2 It is unlikely that Nelson has no documentation showing how it processes account  
 3 information sent by Collins.

4 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
 5 supplemental response to Request No. 28 without the stated objections, provide a  
 6 substantive response, and produce any documents improperly withheld from  
 7 production.

8 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 9 **TO DOCUMENT REQUEST NO. 28:**

10 The motion to compel should be denied as to this request because Plaintiff has  
 11 never made any attempt to meet and confer regarding the request before filing the  
 12 motion. No party may move for an order compelling further discovery until after the  
 13 party has made a good faith attempt to meet and confer to resolve the dispute without  
 14 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this  
 15 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) ("The motion must  
 16 include a certification that the movant has in good faith conferred or attempted to  
 17 confer with the person or party failing to make disclosure or discovery in an effort to  
 18 obtain it without court action."); Local Rule 26.1a ("The court will entertain no  
 19 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have  
 20 previously met and conferred on **all disputed issues.**").

21 Despite these clear requirements, this is one of eighteen separate discovery  
 22 requests that were never discussed in any letter or any phone call by counsel for  
 23 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support  
 24 Of Opposition To Motion To Compel And Motion For Protective Order And Award  
 25 Of Sanctions ("Narita Decl."), ¶¶ 3-6, Exs. A and B. Defendants specifically  
 26 informed counsel for Tourgeman that the motion was improper because no meet and  
 27 confer had been conducted, but Tourgeman's counsel refused to take the motion off  
 28 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

1 Since no meet and confer was conducted as to “all disputed issues” as required  
2 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare  
3 minimum, the Court should deny the motion as to all of the eighteen discovery  
4 requests, including this one, that were never discussed by counsel. *See Presidio*  
5 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, \*3-4  
6 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and  
7 confer conducted in advance of motion). Counsel for Tourgeman should also be  
8 sanctioned for their deliberate refusal to comply with the requirements of the Federal  
9 Rules and the Local Rules.

10  
11 **DOCUMENT REQUEST NO. 29:**

12 Please produce ALL DOCUMENTS that RELATE TO NELSON’S contracts  
13 with skip-tracing services and other data providers YOU use to find current  
14 information for any alleged debtor.

15 **RESPONSE TO DOCUMENT REQUEST NO. 29:**

16 Defendant also objects to this Request on the grounds that it is overbroad,  
17 unduly burdensome and oppressive, and to the extent that it seeks information which  
18 is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead  
19 to the discovery of admissible evidence.

20 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 29:**

21 Defendant also objects to this Request on the grounds that it is overbroad,  
22 unduly burdensome and oppressive, and to the extent that it seeks information which  
23 is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead  
24 to the discovery of admissible evidence. Subject to and without waiving the forgoing  
25 objections or the General Objections, Defendant responds as follows: Defendant will  
26 produce responsive documents.



**PLAINTIFF’S REASONS TO COMPEL FURTHER RESPONSE TO  
DOCUMENT REQUEST NO. 29:**

Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to part of a request must specify the part and permit inspection of the rest.”; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, \*3-4(E.D. Cal. 2006)(“If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant’s original responses contained imprecise, boilerplate objections:

Defendant’s responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

*Id.* at \*4-5.

Nelson objects to Request No. 29 on the basis that it is “overbroad, unduly burdensome and oppressive” and “not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.” But Nelson fails to provide any explanation for these objections. *Keith H. v. Long Beach Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.”). Moreover, because Nelson’s response is so broad and unspecific, it is impossible to tell whether documents are being withheld on the basis of the stated objections, and/or whether responsive documents even exist.

1 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
 2 supplemental response to Request No. 29 without the stated objections, provide a  
 3 substantive response, and produce any documents improperly withheld from  
 4 production.

5 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 6 **TO DOCUMENT REQUEST NO. 29:**

7 Defendant has already agreed to produce, and has produced, documents  
 8 relating to the "bona fide error defense" that it has asserted. There is no basis for  
 9 Tourgeman to seek a further response with respect to this request.

10  
 11 **INTERROGATORIES**

12  
 13 **INTERROGATORY NO. 1:**

14 Please identify the number of persons and entities in the United States who you  
 15 contacted for the purposes of debt collection from July 31, 2007 to the present.  
 16 [Definitions omitted].

17 **RESPONSE TO INTERROGATORY NO. 1:**

18 Defendant objects to this Interrogatory on the grounds that it is overbroad,  
 19 unduly burdensome and oppressive, and seeks information which is not relevant to  
 20 the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of  
 21 admissible evidence. By propounding this Interrogatory, Plaintiff is simply  
 22 attempting to impose undue burden and expense on Defendant. Further, Defendant  
 23 does not concede that Plaintiff may pursue this action as a purported class action nor  
 24 does Defendant concede that, even if class treatment were appropriate, that a class  
 25 action is proper here, or that Plaintiff is a proper class representative with standing to  
 26 pursue claims on behalf of a purported class. In addition, the case is not at issue as  
 27 the Defendant has filed a motion to dismiss and a motion to strike the First Amended  
 28 Complaint. At best, the Interrogatory is premature.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:**

Defendant objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive, and seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. In this action, Plaintiff alleges that Defendants sought to collect a debt for a Dell computer, despite the fact that Plaintiff had allegedly paid for the computer in full. Plaintiff admits, however, that he has no documentation to show that he paid the debt in full. Plaintiff also claims that Defendants filed suit against him in the wrong judicial district. Plaintiff has not alleged, and cannot allege, that every consumer that Defendants tried to collect from had already paid their debt in full. Plaintiff has not alleged, and cannot allege, that every lawsuit that was filed by Defendants was filed in the wrong judicial district. Plaintiff has not alleged that Defendant violated federal or state law with respect to every single person or entity in the United States that it contacted for purposes of debt collection, nor could he make such a claim. There is no basis for asking for the total number of persons contacted. Plaintiff is simply attempting to impose undue burden and expense on Defendant. Further, Defendant does not concede that Plaintiff may pursue this action as a purported class action nor does Defendant concede that, even if class treatment were appropriate, that a class action is proper here, or that Plaintiff is a proper class representative with standing to pursue claims on behalf of a purported class. At best, the Interrogatory is premature. Subject to and without waiving the foregoing and the General Objections, Defendant responds as follows:

Nelson & Kennard engaged in the business of collecting debts. To do so, the firm not only “contacts” debtors, but it also obtains location information from third parties, interacts with courts, interacts with attorneys, corresponds and communicates with its clients and with other third parties in course of its business. Any of these persons or entities could be someone who was “contacted” by the firm for “the purposes of debt collection.” The firm does not track every single person or entity

1 that it ever makes contact with, so this interrogatory in its present form is  
2 unanswerable, and Plaintiff has not agreed to narrow its scope.

3 Defendant admits that it attempted to contact more than forty debtors in an  
4 attempt to collect a debt during the period between July 31, 2007 to the present.

5 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO SPECIAL**  
6 **INTERROGATORY NO. 1:**

7 Federal Rule of Civil Procedure 33 governs the use of interrogatories during  
8 discovery. Rule 33(b)(3) requires that “[e]ach interrogatory must, to the extent it is  
9 not objected to, be answered separately and fully in writing under oath.” Further, all  
10 grounds for objection to an interrogatory must be stated “with specificity.” Fed. R.  
11 Civ. P. 33(b)(4).

12 Nelson objects to Interrogatory No. 1 on the basis that it is “overbroad, unduly  
13 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,  
14 nor reasonably calculated to lead to the discovery of admissible evidence.” Although  
15 Nelson appears to argue the merits of the case in its discovery response, Nelson has  
16 failed to demonstrate how this Interrogatory is overbroad, unduly burdensome and  
17 oppressive. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9<sup>th</sup> Cir. 1975) (those  
18 opposing discovery are “required to carry a heavy burden of showing” why discovery  
19 should be denied). Nelson also argues this Request is inappropriate because  
20 Tourgeman has failed to make certain allegations in the Complaint. But the scope of  
21 discovery is not limited to the issues presented in the pleadings. *Hampton v. City of*  
22 *San Diego*, 147 F.R.D. 227, 229 (S.D. Cal. 1993). Tourgeman may propound  
23 discovery requests if they are reasonably calculated to lead to the discovery of  
24 admissible evidence.

25 In September 2009, this court rejected Nelson’s argument that discovery related  
26 to “class issues” was premature until the class was certified. Nelson claims in its  
27 supplemental responses that Interrogatory No. 1 is premature because Tourgeman  
28 may not pursue this case as a class action. Nelson’s claims are inappropriate,

1 especially since Nelson provided the supplemental responses on January 26, 2010,  
2 nearly four months after this court rejected Nelson's contention.

3 Further, Nelson continues to ignore the allegations in the Complaint. The  
4 Complaint contains class allegations that Nelson engages in improper debt collection  
5 activities. Indeed, The complaint includes class allegations and a class comprised of:

6 All consumers residing in the United States and abroad who, during the  
7 period within one year of the date of the filing of the complaint, were  
8 contacted or sued in the United States by either Collins Financial or Nelson  
& Kennard in an effort to collect an alleged debt.

9 Further, the Complaint contains numerous allegations that Nelson improperly  
10 initiates collections and unlawfully files lawsuits against debtors. In particular, the  
11 Complaint explicitly alleges that Nelson "fails to take the time and effort to verify the  
12 alleged debts or ensure that the lawsuits it files are legitimate and accurate." ¶32. The  
13 Complaint also specifies that Nelson "attempts to quickly obtain default judgments  
14 against consumers without having original or copies of original agreements to prove  
15 the existence, terms, and amount of the debt, and in many cases without having  
16 proper information regarding the location of the debtor, thus obtaining default  
17 judgments without effectuating proper service." ¶32. The Complaint also notes that  
18 "Nelson & Kennard rely on affidavits signed by individuals who the collection law  
19 firms know have no knowledge of the underlying facts and file verified complaints in  
20 which they attest to the truthfulness and accuracy of the information regarding the  
21 alleged debt." ¶35. In other words, regardless of whether the alleged creditor is  
22 Collins or the alleged debtor is Tourgeman, Nelson does not verify information  
23 before it initiates collections and files lawsuits. As such, Nelson's entire debt  
24 collection practices are at issue.

25 Interrogatory No. 1 establishes the number of class members and shows the  
26 scope of Nelson's debt collection activities. Originally, Nelson outright refused to  
27 answer Interrogatory No. 1. Now, Nelson's supplemental response fails to specify an  
28 exact number, merely stating the answer is "more than forty." Under Federal Rule 37,

1 an “evasive or incomplete disclosure, answer, or response” is equivalent to “a failure  
2 to disclose, answer, or respond.” Fed. R. Civ. P. 37(a)(3).

3 Lastly, Nelson erroneously contends that “[p]laintiff is attempting to impose  
4 undue burden and expense on Defendant.” Interrogatory No. 1, however, is narrowly  
5 tailored as it seeks the **number** of persons contacted for debt collection. The  
6 interrogatory does not require Nelson to engage in burdensome data gathering of  
7 personal contact information. Rather, the Interrogatory merely seeks a **number**.

8 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
9 supplemental response to Interrogatory No. 1 without the stated objections and  
10 provide a substantive response.

11 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
12 **TO INTERROGATORY NO. 1:**

13 There is no basis for compelling a further response to this request because  
14 information about the number of persons or entities “contacted” by Defendant over a  
15 three year period is not relevant to any claim at issue, nor likely to lead to the  
16 discovery of admissible evidence. Tourgeman claims that Defendants sued him for a  
17 debt that had already been paid “in full” to Dell, and that Defendants filed suit against  
18 him in the wrong judicial district. He has not and cannot allege that every time  
19 Defendant made “contact” with an individual, it violated the FDCPA. His request  
20 will not identify members of a class.

21 Tourgeman suggests this request is proper because he seeks to represent a  
22 purported FDCPA class of all persons who were “contacted or sued” by Defendants,  
23 and therefore “all” of Defendants’ collection practices are at issue. He is wrong. The  
24 FDCPA does not prohibit collectors from contacting consumers, nor does it bar  
25 collectors from filing suits. Rather, the Act prohibits collectors from engaging in a  
26 specific set of unlawful collection practices. *See* 15 U.S.C. §§ 1692b-1692j. In fact,  
27 the Ninth Circuit has repeatedly recognized the Act was passed to protect consumers  
28 from serious threats, harassment, abuse and other deceptive practices utilized by



1 unscrupulous collectors. *See* 15 U.S.C. § 1692; *Pressley v. Capital Credit and*  
 2 *Collection*, 760 F.2d 922, 925 (9th Cir. 1985) (purpose of Act “is to protect  
 3 consumers from a host of unfair, harassing, and deceptive debt collection practices  
 4 without imposing unnecessary restrictions on ethical debt collectors”) (citation  
 5 omitted). It is not a wholesale ban on any type of contact with a debtor, nor does it  
 6 prohibit collectors from filing suit. The focus of the Act is prevention of deceptive  
 7 and intimidating conduct by collectors that would “seriously disrupt a debtor’s life”:

8       The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors  
 9 from abuse, harassment and deceptive collection practices. . . . Congress was  
 10 concerned with disruptive, threatening, and dishonest tactics. The Senate  
 11 Report accompanying the Act cites practices such as ‘threats of violence,  
 12 telephone calls at unreasonable hours [and] misrepresentation of consumer’s  
 legal rights.’ (Citation). **In other words, Congress seems to have contemplated the type of actions that would intimidate unsophisticated individuals and which, in the words of the Seventh Circuit, ‘would likely disrupt a debtor’s life.’** (Citation).

13 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938-39 (9th Cir. 2007) (emphasis  
 14 added).

15       Tourgeman cannot seek discovery regarding every debtor “contacted or sued”  
 16 by Defendants unless he identifies how the “contacts” or “suits” allegedly violated the  
 17 FDCPA. In *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027 (9th Cir. 2010), the Ninth  
 18 Circuit held that an allegedly false and misleading statement by a collector does not  
 19 violate the FDCPA unless it is “material.” *Id.* At 1033-34. A “material”  
 20 misstatement is one that is “genuinely misleading” and that “may frustrate the  
 21 consumer’s ability to intelligently choose his or her response” to the collector’s  
 22 communication. *Id.* at 1034. The Court noted that:

23       In assessing FDCPA liability, **we are not concerned with mere technical**  
 24 **falsehoods that mislead no one**, but instead with genuinely misleading  
 25 statements that may frustrate a consumer’s ability to intelligently choose his or  
 her response. **Here, the statement in the Complaint did not undermine Donohue’s ability to intelligently choose her action concerning her debt.**

26 *Id.* at 1034 (emphasis added).

27       Finally, discovery relating to “entities” contacted by Defendant for purposes of  
 28 debt collection cannot identify class members, because the FDCPA does not apply to

1 commercial debts. The “threshold issue” for any FDCPA case is whether the plaintiff  
 2 incurred a “debt” as defined by the FDCPA. The Ninth Circuit has so held:

3 Because not all obligations to pay are considered debts under the FDCPA, a  
 4 threshold issue in a suit brought under the Act is whether or not the dispute  
 involves a ‘debt’ within the meaning of the statute.

5 *Turner v. Cook*, 362 F.3d 1219, 1226-27 (9th Cir. 2004) (alleged obligation to pay  
 6 commercial tort judgment not a “debt” under FDCPA). Without evidence that  
 7 Defendant was seeking to collect a “debt” as defined by the FDCPA, there can be no  
 8 “debt collection” and no violation of the FDCPA. *See Bloom v. I.C. System, Inc.*, 972  
 9 F.2d 1067, 1068-69 (9th Cir. 1992) (no “debt” under FDCPA where defendant sought  
 10 to collect on loan used for business venture).<sup>7</sup> The FDCPA limits the definition of a  
 11 “debt” as follows:

12 The term ‘debt’ means any obligation or alleged obligation of a consumer to  
 13 pay money arising out of a transaction in which the money, property, insurance,  
 14 or services which are the subject of the transaction are **primarily for personal,  
 family, or household purposes**, whether such obligation has been reduced to a  
 judgment.

15 *See* 15 U.S.C. § 1692a(5) (emphasis added). Given this, none of the “entities” that  
 16 Defendant contacted for purposes of debt collection can be class members.

17 Tourgeman claims that Defendants sued him for a debt that was paid “in full”  
 18 and filed suit in the wrong judicial district. He is entitled to discovery related to those  
 19 claims. His request for request for information about every person or entity that was  
 20 “contacted” by Defendant is not relevant to his claims, nor will it identify the number  
 21 of class members.

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25 <sup>7</sup> *See also First Gibraltar Bank, FSB v. Smith*, 62 F.3d 133, 135-36 (5th Cir. 1995)  
 26 (affirming dismissal of FDCPA claims where defendant sought to collect obligation  
 27 arising out of commercial transaction); *Beezley v. Fremont Indemnity Co.*, 804 F.2d 530,  
 28 531 (9th Cir. 1986) (per curiam) (affirming dismissal of claim under Consumer Credit  
 Protection Act, 15 U.S.C. §§ 1601-1693r, where, *inter alia*, “the ‘debt’ involved was not  
 a debt as defined in 15 U.S.C. § 1692a(5)”).

**INTERROGATORY NO. 2:**

Please identify the number of persons and entities in the United States who you sued for the purposes of debt collection from July 31, 2006 to the present.

**RESPONSE TO INTERROGATORY NO. 2:**

Defendant objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive, and seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. By propounding this Interrogatory, Plaintiff is simply attempting to impose undue burden and expense on Defendant. Further, Defendant does not concede that Plaintiff may pursue this action as a purported class action nor does Defendant concede that, even if class treatment were appropriate, that a class action is proper here, or that Plaintiff is a proper class representative with standing to pursue claims on behalf of a purported class. In addition, the case is not at issue as the Defendant has filed a motion to dismiss and a motion to strike the First Amended Complaint. At best, the Interrogatory is premature.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2:**

Defendant objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive, and seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff claims that Defendants sought to collect a debt for a Dell computer, despite the fact that he had allegedly paid for the computer in full. Plaintiff admits, however, that he has no documentation to show that he paid the debt in full. Plaintiff also claims that Defendants filed suit against him in the wrong judicial district. Plaintiff has not alleged, and cannot allege, that every consumer that Defendants tried to collect from had already paid their debt in full. Plaintiff has not alleged, and cannot allege, that every lawsuit that was filed by Defendants was filed in the wrong judicial district. Plaintiff has not alleged that Defendants violated federal or state law with respect to every person or entity in the United States that was

sued by Defendants. There is no basis for asking Defendants for the total number of persons or entities sued. Plaintiff is simply attempting to impose undue burden and expense on Defendant. Further, Defendant does not concede that Plaintiff may pursue this action as a purported class action nor does Defendant concede that, even if class treatment were appropriate, that a class action is proper here, or that Plaintiff is a proper class representative with standing to pursue claims on behalf of a purported class. At best, the Interrogatory is premature.

Subject to and without waiving the foregoing and the General Objections, Defendant responds as follows: From July 31, 2006 to the present, Defendant has filed suit against more than forty debtors.

**PLAINTIFF’S REASONS TO COMPEL RESPONSE TO SPECIAL INTERROGATORY NO. 2:**

Federal Rule of Civil Procedure 33 governs that use of interrogatories during discovery. Rule 33(b)(3) requires that “[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.” Further, all grounds for objection to an interrogatory must be stated “with specificity.” Fed. R. Civ. P. 33(b)(4).

Nelson objects to Interrogatory No. 2 on the basis that it is “overbroad, unduly burdensome and oppressive” and “not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.” Although Nelson appears to argue the merits of the case in its discovery response, Nelson has failed to demonstrate how this Interrogatory is overbroad, unduly burdensome and oppressive. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9<sup>th</sup> Cir. 1975) (those opposing discovery are “required to carry a heavy burden of showing” why discovery should be denied). Nelson also argues this Request is inappropriate because Tourgeman has failed to make certain allegations in the Complaint. But the scope of discovery is not limited to the issues presented in the pleadings. *Hampton v. City of San Diego*, 147 F.R.D. 227, 229 (S.D. Cal. 1993). Tourgeman may propound

1 discovery requests if they are reasonably calculated to lead to the discovery of  
2 admissible evidence.

3 In September 2009, this court rejected Nelson's argument that discovery related  
4 to "class issues" was premature until the class was certified. Nelson claims in its  
5 supplemental responses that Interrogatory No. 2 is premature because Tourgeman  
6 may not pursue this case as a class action. Nelson's claims are inappropriate,  
7 especially since Nelson provided the supplemental responses on January 26, 2010,  
8 nearly four months after this court rejected Nelson's contention.

9 Further, Nelson continues to ignore the allegations in the Complaint. The  
10 Complaint contains class allegations that Nelson engages in improper debt collection  
11 activities. Indeed, The complaint includes class allegations and a class comprised of  
12 All consumers residing in the United States and abroad who, during the  
13 period within one year of the date of the filing of the complaint, were  
14 contacted or sued in the United States by either Collins Financial or Nelson  
15 & Kennard in an effort to collect an alleged debt.  
16 Further, the Complaint contains numerous allegations that Nelson improperly  
17 initiates collections and unlawfully files lawsuits against debtors. In particular, the  
18 Complaint explicitly alleges that Nelson "fails to take the time and effort to verify the  
19 alleged debts or ensure that the lawsuits it files are legitimate and accurate." ¶32. The  
20 Complaint also specifies that Nelson "attempts to quickly obtain default judgments  
21 against consumers without having original or copies of original agreements to prove  
22 the existence, terms, and amount of the debt, and in many cases without having  
23 proper information regarding the location of the debtor, thus obtaining default  
24 judgments without effectuating proper service." ¶32. The Complaint also notes that  
25 "Nelson & Kennard rely on affidavits signed by individuals who the collection law  
26 firms know have no knowledge of the underlying facts and file verified complaints in  
27 which they attest to the truthfulness and accuracy of the information regarding the  
28 alleged debt." ¶35. In other words, regardless of whether the alleged creditor is  
Collins or the alleged debtor is Tourgeman, Nelson does not verify information

1 before it initiates collections and files lawsuits. As such, Nelson's entire debt  
2 collection practices are at issue.

3 Interrogatory No. 2 establishes the number of class members and shows the  
4 scope of Nelson's debt collection activities. Originally, Nelson outright refused to  
5 answer Interrogatory No. 1. Now, Nelson's supplemental response fails to specify an  
6 exact number, merely stating the answer is "more than forty." Under Federal Rule 37,  
7 an "evasive or incomplete disclosure, answer, or response" is equivalent to "a failure  
8 to disclose, answer, or respond." Fed. R. Civ. P. 37(a)(3).

9 Lastly, Nelson erroneously contends that "[p]laintiff is attempting to impose  
10 undue burden and expense on Defendant." Interrogatory No.21, however, is narrowly  
11 tailored as it seeks the **number** of persons contacted for debt collection. The  
12 interrogatory does not require Nelson to engage in burdensome data gathering of  
13 personal contact information. Rather, the Interrogatory merely seeks a **number**.

14 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
15 supplemental response to Interrogatory No. 2 without the stated objections and  
16 provide a substantive response.

17 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
18 **TO INTERROGATORY NO. 2:**

19 There is no basis for compelling a further response to this request because  
20 information about the number of persons or entities "sued" by Defendant over a four  
21 year period is not relevant to any claim at issue, nor likely to lead to the discovery of  
22 admissible evidence. Tourgeman claims that Defendants sued him for a debt that had  
23 already been paid "in full" to Dell, and that Defendants filed suit against him in the  
24 wrong judicial district. He has not and cannot allege that every time Defendant filed  
25 suit against an individual, it violated the FDCPA. His request will not identify  
26 members of a class.

27 Tourgeman suggests this request is proper because he seeks to represent a  
28 purported FDCPA class of all persons who were "contacted or sued" by Defendants,



1 and therefore “all” of Defendants’ collection practices are at issue. He is wrong. The  
 2 FDCPA does not prohibit collectors from contacting consumers, nor does it bar  
 3 collectors from filing suits. Rather, the Act prohibits collectors from engaging in a  
 4 specific set of unlawful collection practices. *See* 15 U.S.C. §§ 1692b-1692j. In fact,  
 5 the Ninth Circuit has repeatedly recognized the Act was passed to protect consumers  
 6 from serious threats, harassment, abuse and other deceptive practices utilized by  
 7 unscrupulous collectors. *See* 15 U.S.C. § 1692; *Pressley v. Capital Credit and*  
 8 *Collection*, 760 F.2d 922, 925 (9th Cir. 1985) (purpose of Act “is to protect  
 9 consumers from a host of unfair, harassing, and deceptive debt collection practices  
 10 without imposing unnecessary restrictions on ethical debt collectors”) (citation  
 11 omitted). It is not a wholesale ban on any type of contact with a debtor, nor does it  
 12 prohibit collectors from filing suit. The focus of the Act is prevention of deceptive  
 13 and intimidating conduct by collectors that would “seriously disrupt a debtor’s life”:

14       The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors  
 15       from abuse, harassment and deceptive collection practices. . . . Congress was  
 16       concerned with disruptive, threatening, and dishonest tactics. The Senate  
 17       Report accompanying the Act cites practices such as ‘threats of violence,  
 18       telephone calls at unreasonable hours [and] misrepresentation of consumer’s  
 legal rights.’ (Citation). **In other words, Congress seems to have contemplated the type of actions that would intimidate unsophisticated individuals and which, in the words of the Seventh Circuit, ‘would likely disrupt a debtor’s life.’** (Citation).

19 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938-39 (9th Cir. 2007) (emphasis  
 20 added).

21       Tourgeman cannot seek discovery regarding every debtor “contacted or sued”  
 22 by Defendants unless he identifies how the “contacts” or “suits” allegedly violated the  
 23 FDCPA. In *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027 (9th Cir. 2010), the Ninth  
 24 Circuit held that an allegedly false and misleading statement by a collector does not  
 25 violate the FDCPA unless it is “material.” *Id.* At 1033-34. A “material”  
 26 misstatement is one that is “genuinely misleading” and that “may frustrate the  
 27 consumer’s ability to intelligently choose his or her response” to the collector’s  
 28 communication. *Id.* at 1034. The Court noted that:

1 In assessing FDCPA liability, **we are not concerned with mere technical**  
 2 **falsehoods that mislead no one**, but instead with genuinely misleading  
 3 statements that may frustrate a consumer's ability to intelligently choose his or  
 4 her response. **Here, the statement in the Complaint did not undermine**  
 5 **Donohue's ability to intelligently choose her action concerning her debt.**

6 *Id.* at 1034 (emphasis added).

7 Finally, discovery relating to "entities" sued by Defendant for purposes of debt  
 8 collection cannot identify class members, because the FDCPA does not apply to  
 9 commercial debts. The "threshold issue" for any FDCPA case is whether the plaintiff  
 10 incurred a "debt" as defined by the FDCPA. The Ninth Circuit has so held:

11 Because not all obligations to pay are considered debts under the FDCPA, a  
 12 threshold issue in a suit brought under the Act is whether or not the dispute  
 13 involves a 'debt' within the meaning of the statute.

14 *Turner v. Cook*, 362 F.3d 1219, 1226-27 (9th Cir. 2004) (alleged obligation to pay  
 15 commercial tort judgment not a "debt" under FDCPA). Without evidence that  
 16 Defendant was seeking to collect a "debt" as defined by the FDCPA, there can be no  
 17 "debt collection" and no violation of the FDCPA. *See Bloom v. I.C. System, Inc.*, 972  
 18 F.2d 1067, 1068-69 (9th Cir. 1992) (no "debt" under FDCPA where defendant sought  
 19 to collect on loan used for business venture).<sup>8</sup> The FDCPA limits the definition of a  
 20 "debt" as follows:

21 The term 'debt' means any obligation or alleged obligation of a consumer to  
 22 pay money arising out of a transaction in which the money, property, insurance,  
 23 or services which are the subject of the transaction are **primarily for personal,**  
 24 **family, or household purposes**, whether such obligation has been reduced to a  
 25 judgment.

26 *See* 15 U.S.C. § 1692a(5) (emphasis added). Given this, none of the "entities" that  
 27 Defendant sued for purposes of debt collection can be class members.

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28 <sup>8</sup> *See also First Gibraltar Bank, FSB v. Smith*, 62 F.3d 133, 135-36 (5th Cir. 1995)  
 (affirming dismissal of FDCPA claims where defendant sought to collect obligation  
 arising out of commercial transaction); *Beezley v. Fremont Indemnity Co.*, 804 F.2d 530,  
 531 (9th Cir. 1986) (per curiam) (affirming dismissal of claim under Consumer Credit  
 Protection Act, 15 U.S.C. §§ 1601-1693r, where, *inter alia*, "the 'debt' involved was not  
 a debt as defined in 15 U.S.C. § 1692a(5)").

1       Tourgeman claims that Defendants sued him for a debt that was paid “in full”  
2 and filed suit in the wrong judicial district. He is entitled to discovery related to those  
3 claims. His request for request for information about every person or entity that was  
4 “sued” by Defendant is not relevant to his claims, nor will it identify the number of  
5 class members.

6  
7 **INTERROGATORY NO. 4:**

8       Please state the form of NELSON’s organization and the date and place the  
9 organization was organized and registered and/or licensed to do business.

10 **RESPONSE TO INTERROGATORY NO. 4:**

11       Defendant objects to this Interrogatory on the grounds that it seeks information  
12 which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to  
13 lead to the discovery of admissible evidence. Subject to and without waiving the  
14 forgoing objection or the General Objections, Defendant responds as follows:

15       Nelson & Kennard is a California partnership. It is licensed to do business  
16 where necessary.

17 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:**

18       Defendant objects to this Interrogatory on the grounds that it seeks information  
19 which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to  
20 lead to the discovery of admissible evidence. Subject to and without waiving the  
21 forgoing objection or the General Objections, Defendant responds as follows:

22       Defendant is a California partnership. It is licensed to do business by the  
23 county of Sacramento and its attorneys are licensed to practice law in the State of  
24 California. Defendant also maintains a collection agency license in the State of  
25 Washington.

26 **PLAINTIFF’S REASONS TO COMPEL RESPONSE TO SPECIAL**  
27 **INTERROGATORY NO. 4:**

28       Federal Rule of Civil Procedure 33 governs the use of interrogatories during

1 discovery. Rule 33(b)(3) requires that “[e]ach interrogatory must, to the extent it is  
 2 not objected to, be answered separately and fully in writing under oath.” Further, all  
 3 grounds for objection to an interrogatory must be stated “with specificity.” Fed. R.  
 4 Civ. P. 33(b)(4).

5 Nelson objects to Interrogatory No. 4 on the basis that it is “not relevant to the  
 6 subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of  
 7 admissible evidence.” But Nelson fails to provide any explanation for this objection.  
 8 *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9<sup>th</sup> Cir. 1975) (those opposing  
 9 discovery are “required to carry a heavy burden of showing” why discovery should be  
 10 denied).

11 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 12 **TO INTERROGATORY NO. 4:**

13 Tourgeman does not allege that Nelson & Kennard violated any licensing  
 14 requirements in this case. Rather, he claims that Defendants sued him for a debt that  
 15 was paid “in full” and filed suit in the wrong judicial district. He has not even  
 16 bothered to explain why this information bears on any of his claims. In any event,  
 17 Defendant has responded. There is no basis for compelling a further response.  
 18

19 **INTERROGATORY NO. 5:**

20 Please describe NELSON’s procedures and policies for receiving debt related  
 21 information from NELSON’s client.

22 **RESPONSE TO INTERROGATORY NO. 5:**

23 Defendant objects to this Interrogatory on the grounds that it is vague and  
 24 ambiguous as to the terms “receiving debt related information” and “NELSON’s  
 25 client.” Nelson & Kennard has a number of different clients and it employs various  
 26 methods with respect to each of those clients. Defendant also objects to this  
 27 Interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive,  
 28 and to the extent that it seeks information which is not relevant to the subject matter

1 of this lawsuit, nor reasonably calculated to lead to the discovery of admissible  
2 evidence. Defendant further objects to this Interrogatory to the extent that it seeks  
3 proprietary information, trade secret information, information subject to protective  
4 orders, confidentiality agreements, or statutory provisions that bar the disclosure of  
5 that information without the consent of third parties and to the extent that it seeks  
6 information subject to the attorney-client privilege or the attorney work product  
7 doctrine.

8 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5:**

9 Defendant objects to this Interrogatory on the grounds that it is vague and  
10 ambiguous as to the terms “receiving debt related information” and “NELSON’s  
11 client.” This interrogatory is too vague to be answered in its current form and  
12 Plaintiff has refused to clarify or narrow it. Nelson & Kennard has a number of  
13 different clients and it employs various methods with respect to handling the data  
14 supplied by each of those clients. Defendant also objects to this Interrogatory on the  
15 grounds that it is overbroad, unduly burdensome and oppressive, and to the extent  
16 that it seeks information which is not relevant to the subject matter of this lawsuit, nor  
17 reasonably calculated to lead to the discovery of admissible evidence. Plaintiff does  
18 not claim that his account data was altered by Nelson & Kennard because the firm  
19 employed faulty procedures for “receiving debt related information.” Rather, Plaintiff  
20 alleges that he paid Dell in full for his computer before the account was ever sold to  
21 Collins Financial Services. Any “debt related information” concerning his account,  
22 was according to Plaintiff’s theory, already inaccurate when it was sold to Collins.  
23 The law firm’s policies relating to receiving “debt related information” from its client  
24 are not relevant. Defendant further objects to this Interrogatory to the extent that it  
25 seeks proprietary information, trade secret information, information subject to  
26 protective orders, confidentiality agreements, or statutory provisions that bar the  
27 disclosure of that information without the consent of third parties and to the extent  
28

1 that it seeks information subject to the attorney-client privilege or the attorney work  
2 product doctrine.

3 Subject to and without waiving the forgoing objection or the General  
4 Objections, Defendant responds as follows: Pursuant to Federal Rule of Civil  
5 Procedure 33(d), Defendant will produce documents responsive to this Interrogatory.

6 **PLAINTIFF’S REASONS TO COMPEL RESPONSE TO SPECIAL**  
7 **INTERROGATORY NO. 5:**

8 Federal Rule of Civil Procedure 33 governs that use of interrogatories during  
9 discovery. Rule 33(b)(3) requires that “[e]ach interrogatory must, to the extent it is  
10 not objected to, be answered separately and fully in writing under oath.” Further, all  
11 grounds for objection to an interrogatory must be stated “with specificity.” Fed. R.  
12 Civ. P. 33(b)(4).

13 Nelson objects to Interrogatory No. 5 on the basis that it is “overbroad, unduly  
14 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,  
15 nor reasonably calculated to lead to the discovery of admissible evidence.” Although  
16 Nelson appears to argue the merits of the case in its discovery response, Nelson has  
17 failed to demonstrate how this Interrogatory is overbroad, unduly burdensome and  
18 oppressive. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9<sup>th</sup> Cir. 1975) (those  
19 opposing discovery are “required to carry a heavy burden of showing” why discovery  
20 should be denied).

21 Nelson objects to Interrogatory No. 5 on the basis that the terms “receiving  
22 debt related information” and “NELSON’s client” are vague and ambiguous. Nelson,  
23 however, has failed to exercise reason and common sense to attribute ordinary  
24 definitions to terms and phrases utilized in discovery. *Santana Row Hotel Partners,*  
25 *L.P. v. Zurich Am. Ins. Co.*, 2007 U.S. Dist. LEXIS 31688 (N.D. Cal. 2007). Nelson  
26 argues it “has a number of different clients and it employs various methods with  
27 respect to handling the data supplied by each of those clients.” This is the exact  
28



1 information this Interrogatory seeks. If Nelson employs various methods for different  
2 clients, then Nelson must disclose those methods in its interrogatory response.

3 Further, Federal Rule of Civil Procedure 26(b)(5) states that:

4 When a party withholds information otherwise discoverable by claiming  
5 that the information is privileged or subject to protection as trial-  
preparation material, the party must:

- 6 (i) expressly make the claim; and  
7 (ii) describe the nature of the documents, communications, or tangible things  
8 not produced or disclosed—and do so in a manner that, without revealing  
information itself privileged or protected, will enable other parties to  
9 assess the claim.

10 “A privilege log should contain the following information: (1) the identity and  
11 position of its author; (2) the identity and position of the recipient(s); (3) the date it  
12 was prepared or written; (4) the title and description of the document; (5) the subject  
13 matter addressed; (6) the purposes for which it was prepared or communicated; (7)  
14 the document’s present location; and (8) the specific privilege or other reason it is  
15 being withheld.” *Mancini v. Ins. Corp.*, 2009 U.S. Dist. LEXIS 51321, \*10 (S.D. Cal.  
16 2009). When asserting the attorney-client privilege, “[t]he party asserting the  
17 privilege bears the initial burden of demonstrating that the communication falls  
18 within the privilege.” *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620 (C.D. Cal. 2007).

19 Here, Nelson asserts the attorney-client privilege and attorney work product  
20 protection to Interrogatory No. 5. The objection is stated simply as “without waiving  
21 any objection that the requested documents are protected by the attorney-client  
22 privilege or attorney work product doctrine.” Such a blanket assertion of the  
23 attorney-client privilege or work product doctrine is insufficient to enable the  
24 propounding party to assess the applicability of the privilege or protection to the  
25 specific facts of the interrogatory in question. Further, Nelson has failed to produce a  
26 privilege log containing any of the above-described information as required by  
27 Federal Rule of Civil Procedure 26(b)(5). (Weaver Dec. ¶13). Consequently, the  
28 privilege claims cannot be properly evaluated.

1 Nelson also contends that its policies are not relevant. Nelson is wrong. The  
2 Complaint contains class allegations that Nelson engages in improper debt collection  
3 activities. Indeed, the Complaint includes class allegations and a class comprised of:

4  
5 All consumers residing in the United States and abroad who, during the  
6 period within one year of the date of the filing of the complaint, were  
7 contacted or sued in the United States by either Collins Financial or Nelson  
8 & Kennard in an effort to collect an alleged debt.  
9 Further, the Complaint contains numerous allegations that Nelson improperly  
10 initiates collections and unlawfully files lawsuits against debtors. In particular, the  
11 Complaint explicitly alleges that Nelson “fails to take the time and effort to verify the  
12 alleged debts or ensure that the lawsuits it files are legitimate and accurate.” ¶32. The  
13 Complaint also specifies that Nelson “attempts to quickly obtain default judgments  
14 against consumers without having original or copies of original agreements to prove  
15 the existence, terms, and amount of the debt, and in many cases without having  
16 proper information regarding the location of the debtor, thus obtaining default  
17 judgments without effectuating proper service.” ¶32. The Complaint also notes that  
18 “Nelson & Kennard rely on affidavits signed by individuals who the collection law  
19 firms know have no knowledge of the underlying facts and file verified complaints in  
20 which they attest to the truthfulness and accuracy of the information regarding the  
21 alleged debt.” ¶35. In other words, regardless of whether the alleged creditor is  
22 Collins or the alleged debtor is Tourgeman, Nelson does not verify information  
23 before it initiates collections and files lawsuits. As such, Nelson’s entire debt  
24 collection practices are at issue.

25 The manner in which Nelson receives debt related information is part of its  
26 debt collection practices. Therefore, Nelson’s procedures and policies for receiving  
27 debt related information are relevant.

28 While Nelson agrees to produce records in response to Interrogatory No. 5  
pursuant to Rule 33(d), Nelson fails to specify which records. If the served party  
chooses to respond to an interrogatory by producing business records, the served

1 party must specify, in detail, the records from which the answer may be derived or  
 2 ascertained and afford the party serving the interrogatory reasonable opportunity to  
 3 examine, audit, or inspect the record. *See* Fed. R. Civ. P. 33(d); *Mancini v. Ins.*  
 4 *Corp.*, 2009 U.S. Dist. LEXIS 51321 (S.D. Cal. 2009).

5 As the authorities above reflect, the citation to and production of records as an  
 6 alternate means for responding to interrogatories is proper so long as the documents  
 7 produced are the party's "business records" and the description of the records  
 8 produced in lieu of a response is sufficiently detailed to enable the propounding party  
 9 to locate them. Here, Nelson's citation to and alleged agreement to produce  
 10 documents does not satisfy these two requirements. The response is insufficient for  
 11 two reasons. First, it does not direct Tourgeman to any "business records." Second,  
 12 even assuming these documents are business records, this response lacks the required  
 13 specificity. Nelson must at least provide the titles of the documents or Bates numbers  
 14 of the documents responsive to this Request.

15 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
 16 supplemental response to Interrogatory No. 5 without the stated objections and  
 17 provide a substantive response.

18 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 19 **TO INTERROGATORY NO. 5:**

20 Tourgeman argues that his vague request for discovery about Defendant's  
 21 procedures for "receiving debt related information" is relevant because he has alleged  
 22 that Defendant does not sufficiently investigate debts. But the FDCPA does not  
 23 impose a duty on collectors to independently investigate and verify debts before the  
 24 initiate the collection process. Even though the law does not impose such a duty,  
 25 Defendants have no business interest in seeking to collect money from debtors that do  
 26 not owe it. Defendants do have procedures in place to prevent any attempt to collect  
 27 debts that have already been paid, and they have provided this information to  
 28 Tourgeman already. There is no basis for compelling a further response.

1 The FDCPA does not require a debt collector to independently verify the  
 2 validity of a debt before attempting to collect it. Instead, the FDCPA allows a  
 3 collector to assume the debt is valid, unless the debtor submits a timely dispute to the  
 4 collector. *See* 15 U.S.C. § 1692g(a)(3) (collector must notify consumer that debt will  
 5 be assumed valid unless consumer disputes validity of debt within 30 days of receipt  
 6 of notice); *Smith v. Transworld Sys., Inc.*, 953 F.2d 1025, 1032 (6th Cir. 1992)  
 7 (FDCPA does not require collector to independently investigate debt referred for  
 8 collection); *Hyman v. Tate*, 362 F.3d 965, 968 (7th Cir. 2004) (FDCPA does not  
 9 require collector to independently verify validity of debt to qualify for “bona fide  
 10 error” defense). Here, non-party Paragon Way, Inc. and Nelson & Kennard both sent  
 11 notices to Tourgeman advising him of his right to dispute the debt, but Tourgeman  
 12 never responded.<sup>9</sup>

13 If Tourgeman is arguing that discovery about Defendants’ “investigating” of  
 14 debts is relevant to show that Defendants did not have possession of sufficient  
 15 evidence to prove their case before the collection suit was filed, his requests are  
 16 improper as this Court has already rejected this theory of recovery.<sup>10</sup>

17 Defendants have provided discovery on the procedures used to ensure that they  
 18 are filing suit on valid debts and are filing suit in the correct judicial district. The  
 19 motion should be denied as to this request.

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22 <sup>9</sup> *See* Declaration of Howard Knauer In Support Of Motion For Summary  
 23 Judgment (Docket 75), ¶ 5, Ex. B; Declaration of Jonathan E. Ayers In Support Of  
 24 Motion For Summary Judgment (Docket 73), ¶ 4, Ex. B.

25 <sup>10</sup> *See* Order Granting In Part And Denying In Part Defendant’s Motion To  
 26 Dismiss And Motion To Strike (Docket 58), at 7 (“[T]he filing of a lawsuit, even if a  
 27 plaintiff does not have the means of proving the case at filing or does not ultimately  
 28 prevail, has not by itself been considered harassment or abuse under the FDCPA. *See*,  
*e.g.*, *Heintz v. Jenkins*, 514 U.S. 291, 296 (1995); *Harvey v. Great Seneca Financial*  
*Corp.*, 453 F.3d 324, 330 (6th Cir. 2006).

1 **INTERROGATORY NO. 7:**

2 Please describe NELSON's procedures and policies for filing a lawsuit for  
3 breach of contract on behalf of NELSON's client.

4 **RESPONSE TO INTERROGATORY NO. 7:**

5 Defendant objects to this Interrogatory on the grounds that it is vague and  
6 ambiguous as to the terms "procedures and policies for filing a lawsuit" and  
7 "NELSON's client." Nelson & Kennard has a number of clients and it employs  
8 various methods on behalf of those clients. Defendant also objects to this  
9 Interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive,  
10 and to the extent that it seeks information which is not relevant to the subject matter  
11 of this lawsuit, nor reasonably calculated to lead to the discovery of admissible  
12 evidence. Defendant further objects to this Interrogatory to the extent that it seeks  
13 proprietary information, trade secret information, information subject to protective  
14 orders, confidentiality agreements, or statutory provisions that bar the disclosure of  
15 that information without the consent of third parties and to the extent that it seeks  
16 information subject to the attorney-client privilege or the attorney work product  
17 doctrine.

18 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:**

19 Defendant objects to this Interrogatory on the grounds that it is vague and  
20 ambiguous as to the terms "procedures and policies for filing a lawsuit" and  
21 "NELSON's client." Nelson & Kennard has a number of clients and it employs  
22 various methods on behalf of those clients. For purposes of responding to this  
23 interrogatory, Defendant will assume that the client references is Collins Financial  
24 Services. Defendant also objects to this Interrogatory on the grounds that it is  
25 overbroad, unduly burdensome and oppressive, and to the extent that it seeks  
26 information which is not relevant to the subject matter of this lawsuit, nor reasonably  
27 calculated to lead to the discovery of admissible evidence. Defendant further objects  
28 to this Interrogatory to the extent that it seeks proprietary information, trade secret

1 information, information subject to protective orders, confidentiality agreements, or  
2 statutory provisions that bar the disclosure of that information without the consent of  
3 third parties and to the extent that it seeks information subject to the attorney-client  
4 privilege or the attorney work product doctrine. Subject to and without waiving the  
5 forgoing objection or the General Objections, Defendant responds as follows:

6       Once the firm makes a decision to file suit, an employee of the firm will  
7 prepare a draft complaint on a California Judicial Council form based on the  
8 information received from the client or otherwise available to the firm. The draft  
9 complaint is then forwarded to an attorney for review. The reviewing attorney  
10 examines the information available to the firm concerning the account and reviews  
11 the complaint to ensure that the information plead in it, *i.e.*, the Plaintiff's name, the  
12 name of the original creditor, the name of the debtor, the date of the breach of the  
13 obligation sued upon, the date of charge-off, amount at issue and type of debt  
14 (revolving line of credit or loan, for example) matches the information provided by  
15 Defendant's client. The attorney also reviews the complaint to ensure that the  
16 exemplar terms and conditions attached as an exhibit, if any, are those that were  
17 provided to Defendant in connection with the subject account.

18       Further, the attorney reviews the notes made on the debtor's account to confirm  
19 that a letter has been sent to the debtor informing him that if the collection action is  
20 filed, Collins Financial Services, Inc. might be entitled to recover its reasonable  
21 attorney's fees and court costs as allowed by law in addition to the principal and  
22 interest owed. The attorney also reviews the billing and/or delivery addresses  
23 reflected in the account media that was provided by Defendant's client related to the  
24 subject account, as well as the results of the skiptracing work of the office staff,  
25 including the notes made regarding letters sent and received and any notes made  
26 regarding forwarding or returning of mail or telephone contact in order to verify the  
27 debtor's county of residence. The attorney also reviews the account media in order  
28 to confirm the date of last payment received by the original creditor in order to



1 confirm that a suit is “in statute” at the time it is filed. Finally, the attorney confirms  
2 based upon the information available to the firm that the suit is being filed in the  
3 correct judicial district.

4 **PLAINTIFF’S REASONS TO COMPEL RESPONSE TO SPECIAL**  
5 **INTERROGATORY NO. 7:**

6 Federal Rule of Civil Procedure 33 governs that use of interrogatories during  
7 discovery. Rule 33(b)(3) requires that “[e]ach interrogatory must, to the extent it is  
8 not objected to, be answered separately and fully in writing under oath.” Further, all  
9 grounds for objection to an interrogatory must be stated “with specificity.” Fed. R.  
10 Civ. P. 33(b)(4).

11 Nelson objects to Interrogatory No. 7 on the basis that it is “overbroad, unduly  
12 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,  
13 nor reasonably calculated to lead to the discovery of admissible evidence.” Although  
14 Nelson appears to argue the merits of the case in its discovery response, Nelson has  
15 failed to demonstrate how this Interrogatory is overbroad, unduly burdensome and  
16 oppressive. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9<sup>th</sup> Cir. 1975) (those  
17 opposing discovery are “required to carry a heavy burden of showing” why discovery  
18 should be denied).

19 Nelson objects to Interrogatory No. 7 on the basis that the terms “procedures  
20 and policies for filing a lawsuit” and “NELSON’s client” are vague and ambiguous.  
21 Nelson, however, has failed to exercise reason and common sense to attribute  
22 ordinary definitions to terms and phrases utilized in discovery. *Santana Row Hotel*  
23 *Partners, L.P. v. Zurich Am. Inc. Co.*, 2007 U.S. Dist. LEXIS 31688 (N.D. Cal. 2007).  
24 Nelson argues it has a “number of clients and it employs various methods on behalf of  
25 those clients.” This is the exact information this Interrogatory seeks. If Nelson  
26 employs various methods for different clients, then Nelson must disclose those  
27 methods in its response.

28 Further, Federal Rule of Civil Procedure 26(b)(5) states that:

1 When a party withholds information otherwise discoverable by claiming  
2 that the information is privileged or subject to protection as trial-  
preparation material, the party must:

- 3 (i) expressly make the claim; and  
4 (ii) describe the nature of the documents, communications, or tangible things  
5 not produced or disclosed—and do so in a manner that, without revealing  
information itself privileged or protected, will enable other parties to  
6 assess the claim.

7 “A privilege log should contain the following information: (1) the identity and  
8 position of its author; (2) the identity and position of the recipient(s); (3) the date it  
9 was prepared or written; (4) the title and description of the document; (5) the subject  
10 matter addressed; (6) the purposes for which it was prepared or communicated; (7)  
the document’s present location; and (8) the specific privilege or other reason it is  
11 being withheld.” *Mancini v. Ins. Corp.*, 2009 U.S. Dist. LEXIS 51321, \*10 (S.D. Cal.  
12 2009). When asserting the attorney-client privilege, “[t]he party asserting the  
13 privilege bears the initial burden of demonstrating that the communication falls  
14 within the privilege.” *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620 (C.D. Cal. 2007).

15 Here Nelson asserts the attorney-client privilege and attorney work product  
16 protection to Interrogatory No. 7. The objection is stated simply as “seek[ing]  
17 information subject to the attorney-client privilege or the attorney work product  
18 doctrine.” Such a blanket assertion of the attorney-client privilege or work product  
19 doctrine is insufficient to enable the propounding party to assess the applicability of  
20 the privilege or protection to the specific facts of the interrogatory in question.  
21 Further, Nelson has failed to produce a privilege log containing any of the above-  
22 described information as required by Federal Rule of Civil Procedure 26(b)(5).  
23 (Weaver Dec. ¶13). Consequently, the privilege claims cannot be properly evaluated.

24 Lastly, Nelson’s supplemental response to Interrogatory No. 7 attempts to limit  
25 the response to Collins. The Complaint, however, contains class allegations that  
26 Nelson engages in improper debt collection activities. Indeed, the Complaint  
27 includes class allegations and a class comprised of:  
28

1 All consumers residing in the United States and abroad who, during the  
2 period within one year of the date of the filing of the complaint, were  
3 contacted or sued in the United States by either Collins Financial or Nelson  
& Kennard in an effort to collect an alleged debt.

4 Further, the Complaint contains numerous allegations that Nelson improperly  
5 initiates collections and unlawfully files lawsuits against debtors. In particular, the  
6 Complaint explicitly alleges that Nelson “fails to take the time and effort to verify the  
7 alleged debts or ensure that the lawsuits it files are legitimate and accurate.” ¶32. The  
8 Complaint also specifies that Nelson “attempts to quickly obtain default judgments  
9 against consumers without having original or copies of original agreements to prove  
10 the existence, terms, and amount of the debt, and in many cases without having  
11 proper information regarding the location of the debtor, thus obtaining default  
12 judgments without effectuating proper service.” ¶32. The Complaint also notes that  
13 “Nelson & Kennard rely on affidavits signed by individuals who the collection law  
14 firms know have no knowledge of the underlying facts and file verified complaints in  
15 which they attest to the truthfulness and accuracy of the information regarding the  
16 alleged debt.” ¶35. In other words, regardless of whether the alleged creditor is  
17 Collins or the alleged debtor is Tourgeman, Nelson does not verify information  
18 before it initiates collections and files lawsuits. As such, Nelson’s entire debt  
collection practices are at issue.

19 Therefore, Nelson’s procedures and policies for filing a debt-related lawsuit on  
20 behalf of all clients, not just Collins, are relevant here.

21 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
22 supplemental response to Interrogatory No. 7 without the stated objections and  
23 provide a substantive response.

24 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
25 **TO INTERROGATORY NO. 7:**

26 Defendant has provided a detailed response to this interrogatory describing  
27 how it generally prepares lawsuit for Collins, and it has produced responsive  
28 documents. There is no basis for compelling a further response with respect to every

1 complaint that Defendant has prepared on behalf of every other client. Tourgeman  
 2 claims that Defendants sued him for a debt that had already been paid “in full” to  
 3 Dell, and that Defendants filed suit against him in the wrong judicial district. He has  
 4 not and cannot allege that every time Defendant filed suit against an individual, it  
 5 violated the FDCPA. His request will not lead to discoverable information and will  
 6 not identify members of a class.

7 Tourgeman suggests this request is proper because he seeks to represent a  
 8 purported FDCPA class of all persons who were “contacted or sued” by Defendants,  
 9 and therefore “all” of Defendants’ collection practices are at issue. He is wrong. The  
 10 FDCPA does not prohibit collectors from contacting consumers, nor does it bar  
 11 collectors from filing suits. Rather, the Act prohibits collectors from engaging in a  
 12 specific set of unlawful collection practices. *See* 15 U.S.C. §§ 1692b-1692j. In fact,  
 13 the Ninth Circuit has repeatedly recognized the Act was passed to protect consumers  
 14 from serious threats, harassment, abuse and other deceptive practices utilized by  
 15 unscrupulous collectors. *See* 15 U.S.C. § 1692; *Pressley v. Capital Credit and*  
 16 *Collection*, 760 F.2d 922, 925 (9th Cir. 1985) (purpose of Act “is to protect  
 17 consumers from a host of unfair, harassing, and deceptive debt collection practices  
 18 without imposing unnecessary restrictions on ethical debt collectors”) (citation  
 19 omitted). It is not a wholesale ban on any type of contact with a debtor, nor does it  
 20 prohibit collectors from filing suit. The focus of the Act is prevention of deceptive  
 21 and intimidating conduct by collectors that would “seriously disrupt a debtor’s life”:

22 The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors  
 23 from abuse, harassment and deceptive collection practices. . . . Congress was  
 24 concerned with disruptive, threatening, and dishonest tactics. The Senate  
 25 Report accompanying the Act cites practices such as ‘threats of violence,  
 26 telephone calls at unreasonable hours [and] misrepresentation of consumer’s  
 legal rights.’ (Citation). **In other words, Congress seems to have  
 contemplated the type of actions that would intimidate unsophisticated  
 individuals and which, in the words of the Seventh Circuit, ‘would likely  
 disrupt a debtor’s life.’** (Citation).

27 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938-39 (9th Cir. 2007) (emphasis  
 28 added).

1       Tourgeman cannot seek discovery regarding every debtor “contacted or sued”  
 2 by Defendants unless he identifies how the “contacts” or “suits” allegedly violated the  
 3 FDCPA. In *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027 (9th Cir. 2010), the Ninth  
 4 Circuit held that an allegedly false and misleading statement by a collector does not  
 5 violate the FDCPA unless it is “material.” *Id.* At 1033-34. A “material”  
 6 misstatement is one that is “genuinely misleading” and that “may frustrate the  
 7 consumer’s ability to intelligently choose his or her response” to the collector’s  
 8 communication. *Id.* at 1034. The Court noted that:

9       In assessing FDCPA liability, **we are not concerned with mere technical**  
 10 **falsehoods that mislead no one**, but instead with genuinely misleading  
 11 statements that may frustrate a consumer’s ability to intelligently choose his or  
 12 her response. **Here, the statement in the Complaint did not undermine**  
 13 **Donohue’s ability to intelligently choose her action concerning her debt.**

12 *Id.* at 1034 (emphasis added).

13       Finally, discovery relating to “entities” sued by Defendant for purposes of debt  
 14 collection cannot lead to discoverable evidence, because the FDCPA does not apply  
 15 to commercial debts. The “threshold issue” for any FDCPA case is whether the  
 16 plaintiff incurred a “debt” as defined by the FDCPA. The Ninth Circuit has so held:

17       Because not all obligations to pay are considered debts under the FDCPA, a  
 18 threshold issue in a suit brought under the Act is whether or not the dispute  
 19 involves a ‘debt’ within the meaning of the statute.

20 *Turner v. Cook*, 362 F.3d 1219, 1226-27 (9th Cir. 2004) (alleged obligation to pay  
 21 commercial tort judgment not a “debt” under FDCPA). Without evidence that  
 22 Defendant was seeking to collect a “debt” as defined by the FDCPA, there can be no  
 23 “debt collection” and no violation of the FDCPA. *See Bloom v. I.C. System, Inc.*, 972  
 24 F.2d 1067, 1068-69 (9th Cir. 1992) (no “debt” under FDCPA where defendant sought  
 25  
 26  
 27  
 28

1 to collect on loan used for business venture).<sup>11</sup> The FDCPA limits the definition of a  
2 “debt” as follows:

3       The term ‘debt’ means any obligation or alleged obligation of a consumer to  
4       pay money arising out of a transaction in which the money, property, insurance,  
5       or services which are the subject of the transaction are **primarily for personal,  
family, or household purposes**, whether such obligation has been reduced to a  
judgment.

6 *See* 15 U.S.C. § 1692a(5) (emphasis added). Given this, none of the “entities” that  
7 Defendant sued for purposes of debt collection can be class members.

8       Nor is the request justified because Tourgeman claims that Defendant failed to  
9 properly “investigate” his claim before it filed suit. The FDCPA does not require a  
10 debt collector to independently verify the validity of a debt before attempting to  
11 collect it. Instead, the FDCPA allows a collector to assume the debt is valid, unless  
12 the debtor submits a timely dispute to the collector. *See* 15 U.S.C. § 1692g(a)(3)  
13 (collector must notify consumer that debt will be assumed valid unless consumer  
14 disputes validity of debt within 30 days of receipt of notice); *Smith v. Transworld*  
15 *Sys., Inc.*, 953 F.2d 1025, 1032 (6th Cir. 1992) (FDCPA does not require collector to  
16 independently investigate debt referred for collection); *Hyman v. Tate*, 362 F.3d 965,  
17 968 (7th Cir. 2004) (FDCPA does not require collector to independently verify  
18 validity of debt to qualify for “bona fide error” defense). Here, non-party Paragon  
19 Way, Inc. and Nelson & Kennard both sent notices to Tourgeman advising him of his  
20 right to dispute the debt, but Tourgeman never responded.<sup>12</sup>

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21  
22       <sup>11</sup> *See also First Gibraltar Bank, FSB v. Smith*, 62 F.3d 133, 135-36 (5th Cir. 1995)  
23 (affirming dismissal of FDCPA claims where defendant sought to collect obligation  
24 arising out of commercial transaction); *Beezley v. Fremont Indemnity Co.*, 804 F.2d 530,  
25 531 (9th Cir. 1986) (per curiam) (affirming dismissal of claim under Consumer Credit  
26 Protection Act, 15 U.S.C. §§ 1601-1693r, where, *inter alia*, “the ‘debt’ involved was not  
a debt as defined in 15 U.S.C. § 1692a(5)”).

27       <sup>12</sup> *See* Declaration of Howard Knauer In Support Of Motion For Summary  
28 Judgment (Docket 75), ¶ 5, Ex. B; Declaration of Jonathan E. Ayers In Support Of  
Motion For Summary Judgment (Docket 73), ¶ 4, Ex. B.



1 If Tourgeman is arguing that discovery about Defendants' "investigating" of  
 2 debts is relevant to show that Defendants did not have possession of sufficient  
 3 evidence to prove their case before the collection suit was filed, his requests are  
 4 improper as this Court has already rejected this theory of recovery.<sup>13</sup>

5 Defendant has provided detailed description of the process used when  
 6 preparing complaints on behalf of Collins, and has provided discovery on the  
 7 procedures used to ensure that they are filing suit on valid debts and are filing suit in  
 8 the correct judicial district. The motion should be denied as to this request.

9  
 10 **INTERROGATORY NO. 10:**

11 Please describe NELSON's procedures and policies for settling outstanding  
 12 alleged debts from alleged debtors.

13 **RESPONSE TO INTERROGATORY NO. 10:**

14 Defendant objects to this Interrogatory on the grounds that it is vague and  
 15 ambiguous as to the term "procedures and policies for settling." Nelson & Kennard  
 16 has a number of clients and it utilizes different approaches to settlement based upon  
 17 the client and the circumstances. Defendant also objects to this Interrogatory on the  
 18 grounds that it is overbroad, unduly burdensome and oppressive, and to the extent  
 19 that it seeks information which is not relevant to the subject matter of this lawsuit, nor  
 20 reasonably calculated to lead to the discovery of admissible evidence. Defendant  
 21 further objects to this Interrogatory to the extent that it seeks proprietary information,  
 22 trade secret information, information subject to protective orders, confidentiality  
 23 agreements, or statutory provisions that bar the disclosure of that information without

24 \_\_\_\_\_  
 25 <sup>13</sup> See Order Granting In Part And Denying In Part Defendant's Motion To  
 26 Dismiss And Motion To Strike (Docket 58), at 7 ("[T]he filing of a lawsuit, even if a  
 27 plaintiff does not have the means of proving the case at filing or does not ultimately  
 28 prevail, has not by itself been considered harassment or abuse under the FDCPA. See,  
*e.g., Heintz v. Jenkins*, 514 U.S. 291, 296 (1995); *Harvey v. Great Seneca Financial*  
*Corp.*, 453 F.3d 324, 330 (6th Cir. 2006).

1 the consent of third parties and to the extent that it seeks information subject to the  
2 attorney-client privilege or the attorney work product doctrine.

3 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO SPECIAL**  
4 **INTERROGATORY NO. 10:**

5 Federal Rule of Civil Procedure 33 governs the use of Interrogatories during  
6 discovery. Rule 33(b)(3) requires that “[e]ach interrogatory must, to the extent it is  
7 not objected to, be answered separately and fully in writing under oath.” Further, all  
8 grounds for objection to an interrogatory must be stated “with specificity.” Fed R.  
9 Civ. P. 33(b)(4). Nelson has not provided any substantive response to this  
10 Interrogatory.

11 Nelson objects to Interrogatory No. 10 on the basis that is “overbroad, unduly  
12 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,  
13 nor reasonably calculated to lead to the discovery of admissible evidence.” But  
14 Nelson fails to provide any explanation for these objections. *Blankenship v. Hearst*  
15 *Corp.*, 519 F.2d 418, 429 (9<sup>th</sup> cir. 1975) (those opposing discovery are “required to  
16 carry a heavy burden of showing” why discovery should be denied).

17 Nelson objects to Interrogatory No. 7 on the basis that the terms “procedures  
18 and policies for settling” is vague and ambiguous. Nelson, however, has failed to  
19 exercise reason and common sense to attribute ordinary definitions to terms and  
20 phrases utilized in discovery. *Santana Row Hotel Partners, L.P. v. Zurich Am. Inc.*  
21 *Co.*, 2007 U.S. Dist. LEXIS 31688 (N.D. Cal. 2007). Nelson argues it has a “number  
22 of clients and it utilized different approaches to settlement based upon the client and  
23 the circumstances.” This is the exact information this Interrogatory seeks. If Nelson  
24 employs various methods for different clients, then Nelson must disclose those  
25 methods.

26 Further, Federal Rule of Civil Procedure 26(b)(5) further provides:

27 When a party withholds information otherwise discoverable by claiming  
28 that the information is privileged or subject to protection as trial-  
preparation material, the party must:

- 1 (i) expressly make the claim; and
- 2 (ii) describe the nature of the documents, communications, or tangible things  
3 not produced or disclosed—and do so in a manner that, without revealing  
4 information itself privileged or protected, will enable other parties to  
5 assess the claim.

6 “A privilege log should contain the following information: (1) the identity and  
7 position of its author; (2) the identity and position of the recipient(s); (3) the date it  
8 was prepared or written; (4) the title and description of the document; (5) the subject  
9 matter addressed; (6) the purposes for which it was prepared or communicated; (7)  
10 the document’s present location; and (8) the specific privilege or other reason it is  
11 being withheld.” *Mancini v. Ins. Corp.*, 2009 U.S. Dist. LEXIS 51321, \*10 (S.D. Cal.  
12 2009). When asserting the attorney-client privilege, “[t]he party asserting the  
13 privilege bears the initial burden of demonstrating that the communication falls  
14 within the privilege.” *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620 (C.D. Cal. 2007).

15 Here Nelson asserts the attorney-client privilege and attorney work product  
16 protection to Interrogatory No. 10. The objection is stated simply as “seek[ing]  
17 information subject to the attorney-client privilege or the attorney work product  
18 doctrine.” Such a blanket assertion of the attorney-client privilege or work product  
19 doctrine is insufficient to enable the propounding party to assess the applicability of  
20 the privilege or protection to the specific facts of the interrogatory in question.  
21 Further, Nelson has failed to produce a privilege log containing any of the above-  
22 described information as required by Federal Rule of Civil Procedure 26(b)(5).  
(Weaver Dec. ¶13). Consequently, the privilege claims cannot be properly evaluated.

23 The Complaint alleges that Nelson improperly initiates collections and  
24 unlawfully files suits against alleged debtors. The manner in which Nelson settles  
25 debts with alleged debtors is one part of its debt collection activities. Therefore,  
26 Nelson’s policies and procedures for settling debts tend to show how Nelson settles  
27 its debts and reflects upon its debt collection activities. Thus, Interrogatory No. 10 is  
28 relevant and reasonably calculated to lead to the discovery of admissible evidence.

1 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
 2 supplemental response to Interrogatory No. 10 without the stated objections and  
 3 provide a substantive response.

4 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 5 **TO INTERROGATORY NO. 10:**

6 There is no basis for seeking to compel information concerning Defendants'  
 7 policies for settling debts. This discovery has nothing to do with this case.  
 8 Tourgeman does not even allege that Defendants violated the FDCPA in connection  
 9 with settling any debt.

10 Even if he had, there is nothing unlawful about settling debts. To the contrary,  
 11 cases have repeatedly recognized that the FDCPA encourages settlement of debts  
 12 without litigation. "There is nothing improper about making a settlement offer.  
 13 (Citation). Forbidding them would force honest debt collectors seeking a peaceful  
 14 resolution of the debt to file suit in order to advance efforts to resolve the debt-  
 15 something that is clearly at odds with the language and purpose of the [Act]."  
 16 *Campuzano-Burgos v. Midland Credit Management, Inc.*, 550 F. 3d 294, 299 (3d Cir.  
 17 2008) (citing *Evory v. RJM Acquisitions Funding, LLC*, 505 F. 3d 769 (7th Cir. 2007)  
 18 and *Lewis v. ACB Bus. Servs., Inc.*, 135 F. 3d 389, 399 (6th Cir. 1998).

19 The motion must be denied as to these requests seeking information relating to  
 20 Defendants policies and procedures relating to settling debts.

21  
 22 **INTERROGATORY NO. 11:**

23 Please identify all creditors that retained NELSON - from July 31, 2006 to the  
 24 present - for the purpose of collecting debts.

25 **RESPONSE TO INTERROGATORY NO. 11:**

26 Defendant objects to this Interrogatory on the grounds that it is overbroad,  
 27 unduly burdensome and oppressive, and to the extent that it seeks information which  
 28 is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead

1 to the discovery of admissible evidence. There is no basis for identifying other  
 2 creditors that did not extend credit to Plaintiff and that have no relationship to this  
 3 case. Defendant further objects to this Interrogatory to the extent that it seeks  
 4 proprietary information, trade secret information, information subject to protective  
 5 orders, confidentiality agreements, or statutory provisions that bar the disclosure of  
 6 that information without the consent of third parties and to the extent that it seeks  
 7 information subject to the attorney-client privilege or the attorney work product  
 8 doctrine.

9 **PLAINTIFF’S REASONS TO COMPEL RESPONSE TO SPECIAL**  
 10 **INTERROGATORY NO. 11:**

11 Federal Rule of Civil Procedure 33 governs the use of Interrogatories during  
 12 discovery. Rule 33(b)(3) requires that “[e]ach interrogatory must, to the extent it is  
 13 not objected to, be answered separately and fully in writing under oath.” Further, all  
 14 grounds for objection to an interrogatory must be stated “with specificity.” Fed. R.  
 15 Civ. P. 33(b)(4). Nelson has not provided any substantive response to this  
 16 Interrogatory.

17 Nelson objects to Interrogatory No. 11 on the basis that is “overbroad, unduly  
 18 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,  
 19 nor reasonably calculated to lead to the discovery of admissible evidence.” But  
 20 Nelson fails to provide any explanation for these objections. *Blankenship v. Hearst*  
 21 *Corp.*, 519 F.2d 418, 429 (9<sup>th</sup> cir. 1975) (those opposing discovery are “required to  
 22 carry a heavy burden of showing” why discovery should be denied).

23 Nelson objects to Interrogatory No. 11 on the basis that the terms “procedures  
 24 and policies for settling” is vague and ambiguous. Nelson, however, has failed to  
 25 exercise reason and common sense to attribute ordinary definitions to terms and  
 26 phrases utilized in discovery. *Santana Row Hotel Partners, L.P. v. Zurich Am. Inc.*  
 27 *Co.*, 2007 U.S. Dist. LEXIS 31688 (N.D. Cal. 2007). Nelson argues it has a “number  
 28 of clients and it utilized different approaches to settlement based upon the client and

1 the circumstances.” This is the exact information this Interrogatory seeks. If Nelson  
 2 employs various methods for different clients, then Nelson must disclose those  
 3 methods in its response.

4 Further, Federal Rule of Civil Procedure 26(b)(5) further provides:

5 When a party withholds information otherwise discoverable by claiming  
 6 that the information is privileged or subject to protection as trial-  
 preparation material, the party must:

- 7 (i) expressly make the claim; and
- 8 (ii) describe the nature of the documents, communications, or tangible things  
 9 not produced or disclosed—and do so in a manner that, without revealing  
 information itself privileged or protected, will enable other parties to  
 10 assess the claim.

11 “A privilege log should contain the following information: (1) the identity and  
 12 position of its author; (2) the identity and position of the recipient(s); (3) the date it  
 13 was prepared or written; (4) the title and description of the document; (5) the subject  
 14 matter addressed; (6) the purposes for which it was prepared or communicated; (7)  
 15 the document’s present location; and (8) the specific privilege or other reason it is  
 16 being withheld.” *Mancini v. Ins. Corp.*, 2009 U.S. Dist. LEXIS 51321, \*10 (S.D. Cal.  
 17 2009). When asserting the attorney-client privilege, “[t]he party asserting the  
 18 privilege bears the initial burden of demonstrating that the communication falls  
 19 within the privilege.” *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620 (C.D. Cal. 2007).

20 Here Nelson asserts the attorney-client privilege and attorney work product  
 21 protection to Interrogatory No. 11. The objection is stated simply as “seek[ing]  
 22 information subject to the attorney-client privilege or the attorney work product  
 23 doctrine.” Such a blanket assertion of the attorney-client privilege or work product  
 24 doctrine is insufficient to enable the propounding party to assess the applicability of  
 25 the privilege or protection to the specific facts of the interrogatory in question.  
 26 Further, Nelson has failed to produce a privilege log containing any of the above-  
 27 described information as required by Federal Rule of Civil Procedure 26(b)(5).  
 28 (Weaver Dec. ¶13). Consequently, the privilege claims cannot be properly evaluated.



1 Nelson objects to Interrogatory No. 11 on relevancy grounds, arguing that  
2 “there is no basis for identifying other creditors that did not extend credit to  
3 Plaintiff.” Nelson is wrong. Creditors that retained Nelson from July 31, 2006 to the  
4 present may have information regarding Nelson’s debt collection activities and could  
5 potentially testify as witnesses. Since Nelson’s debt collection activities are directly  
6 at issue here, this Interrogatory is within the scope of the Federal Rules of Civil  
7 Procedure.

8 Accordingly, Tourgeman requests that this court order Nelson to provide a  
9 supplemental response to Interrogatory No. 11 without the stated objections and  
10 provide a substantive response.

11 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
12 **TO INTERROGATORY NO. 11:**

13 There is no basis for compelling Defendant to identify all of the other creditors  
14 that have retained Defendant to collect debts. Tourgeman apparently seeks this  
15 information so that he can blanket the country with subpoenas directed at Defendant’s  
16 other clients in the hopes that this disruption to Defendant’s business relationships  
17 will coerce a settlement. This is a wholly improper abuse of the discovery process.

18 Tourgeman claims that Defendants sued him for a debt that had already been  
19 paid “in full” to Dell, and that Defendants filed suit against him in the wrong judicial  
20 district. He has not and cannot allege that every time Defendant filed suit on behalf  
21 of any creditor, it violated the FDCPA. His request will not lead to discoverable  
22 information and will not identify members of a class.

23 Defendant has provided a detailed information describing how it generally  
24 prepares lawsuit for Collins, and it has produced responsive documents related to the  
25 claims raised by Tourgeman in this case. There is no basis for compelling a further  
26 response to force Defendant to identify its other clients.

**INTERROGATORY NO. 13:**

Did NELSON make any substantive change in company policy from July 31, 2006 to the present? If so, please identify and describe any substantive changes NELSON made – from July 31, 2006 to the present – to any NELSON policy or procedure in an effort to comply with the provision of the Federal [sic] Debt Collection Practices Act.

**RESPONSE TO INTERROGATORY NO. 13:**

Defendant objects to this Interrogatory on the grounds that it is vague and ambiguous regarding the term “substantive change in company policy.” The firm of Nelson & Kennard complies with the FDCPA and engages in ongoing efforts to ensure compliance. Subject to and without waiving the forgoing objections or the General Objections, Defendant responds as follows: Defendant exercises its option to produce records in response to this Interrogatory pursuant to Rule 33(d) of the Federal Rules of Civil Procedure.

**PLAINTIFF’S REASONS TO COMPEL RESPONSE TO SPECIAL INTERROGATORY NO. 13:**

Federal Rule of Civil Procedure 33 governs the use of Interrogatories during discovery. Rule 33(b)(3) requires that “[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.” Further, all grounds for objection to an interrogatory must be stated “with specificity.” Fed. R. Civ. P. 33(b)(4).

Nelson objects to Interrogatory No. 13 on the basis that the term “substantive change in company policy” is “vague and ambiguous.” Nelson, however, has failed to exercise reason and common sense to attribute ordinary definitions to terms and phrases utilized in discovery. *Santana Row Hotel Partners, L.P. v. Zurich Am. Ins. Co.*, 2007 U.S. dist. LEXIS 31688 (N.D. Cal 2007). Because Nelson has failed to demonstrate how this Interrogatory is vague and ambiguous, this boilerplate objection cannot be sustained.

1 While Nelson agrees to produce records in response to Interrogatory No. 13  
 2 pursuant to Rule 33(d), Nelson fails to specify which records. If the served party  
 3 chooses to respond to an interrogatory by producing business records, the served  
 4 party must specify, in detail, the records from which the answer may be derived or  
 5 ascertained and afford the party serving the interrogatory reasonable opportunity to  
 6 examine, audit, or inspect the record. *See* Fed. R. Civ. P. 33(d); *Mancini v. Ins.*  
 7 *Corp.*, 2009 U.S. Dist. LEXIS 51321 (S.D. Cal. 2009).

8 As the authorities above reflect, the citation to and production of records as an  
 9 alternate means for responding to interrogatories is proper so long as the documents  
 10 produced are the party's "business records" and the description of the records  
 11 produced in lieu of a response is sufficiently detailed to enable the propounding party  
 12 to locate them. Here, Nelson's citation to and alleged agreement to produce  
 13 documents does not satisfy these two requirements. The response is insufficient for  
 14 two reasons. First, it does not direct Tourgeman to any "business records." Second,  
 15 even assuming these documents are business records, this response lacks the required  
 16 specificity. Nelson must at least provide the titles of the documents or Bates numbers  
 17 of the documents responsive to this Request.

18 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
 19 supplemental response to Interrogatory No. 13 without the stated objections and  
 20 provide a substantive response.

21 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 22 **TO INTERROGATORY NO. 13:**

23 The motion to compel should be denied as to this request because Plaintiff has  
 24 never made any attempt to meet and confer regarding the request before filing the  
 25 motion. No party may move for an order compelling further discovery until after the  
 26 party has made a good faith attempt to meet and confer to resolve the dispute without  
 27 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this  
 28 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) ("The motion must

1 include a certification that the movant has in good faith conferred or attempted to  
 2 confer with the person or party failing to make disclosure or discovery in an effort to  
 3 obtain it without court action.”); Local Rule 26.1a (“The court will entertain no  
 4 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have  
 5 previously met and conferred on **all disputed issues.**”).

6 Despite these clear requirements, this is one of eighteen separate discovery  
 7 requests that were never discussed in any letter or any phone call by counsel for  
 8 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support  
 9 Of Opposition To Motion To Compel And Motion For Protective Order And Award  
 10 Of Sanctions (“Narita Decl.”), ¶¶ 3-6, Exs. A and B. Defendants specifically  
 11 informed counsel for Tourgeman that the motion was improper because no meet and  
 12 confer had been conducted, but Tourgeman’s counsel refused to take the motion off  
 13 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

14 Since no meet and confer was conducted as to “all disputed issues” as required  
 15 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare  
 16 minimum, the Court should deny the motion as to all of the eighteen discovery  
 17 requests, including this one, that were never discussed by counsel. *See Presidio*  
 18 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, \*3-4  
 19 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and  
 20 confer conducted in advance of motion). Counsel for Tourgeman should also be  
 21 sanctioned for their deliberate refusal to comply with the requirements of the Federal  
 22 Rules and the Local Rules.

23  
 24 **INTERROGATORY NO. 14:**

25 Please describe the compensation agreements between NELSON and any  
 26 creditor that uses NELSON to file complaints against alleged debtors for breach of  
 27 contract and Rule 3.740 collections.  
 28

**RESPONSE TO INTERROGATORY NO. 14:**

Defendant objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. The compensation arrangements between Nelson & Kennard and its clients have nothing to do with the allegations of this case. There is no legitimate basis for requesting this information, other than to harass and annoy Defendant. Defendant further objects to this Interrogatory to the extent that it seeks proprietary information, trade secret information, information subject to protective orders, confidentiality agreements, or statutory provisions that bar the disclosure of that information without the consent of third parties and to the extent that it seeks information subject to the attorney-client privilege or the attorney work product doctrine.

**PLAINTIFF'S REASONS TO COMPEL RESPONSE TO SPECIAL INTERROGATORY NO. 14:**

Federal Rule of Civil Procedure 33 governs the use of Interrogatories during discovery. Rule 33(b)(3) requires that "[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath." Further, all grounds for objection to an interrogatory must be stated "with specificity." Fed. R. Civ. P. 33(b)(4). Nelson has not provided any substantive response to this Interrogatory.

Nelson objects to Interrogatory No. 14 on the basis that is "overbroad, unduly burdensome and oppressive" and "not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence." But Nelson fails to provide any explanation for these objections. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9<sup>th</sup> cir. 1975) (those opposing discovery are "required to carry a heavy burden of showing" why discovery should be denied).

Federal Rule of Civil Procedure 26(b)(5) further provides:

1 When a party withholds information otherwise discoverable by claiming  
2 that the information is privileged or subject to protection as trial-  
preparation material, the party must:

- 3 (i) expressly make the claim; and  
4 (ii) describe the nature of the documents, communications, or tangible things  
5 not produced or disclosed—and do so in a manner that, without revealing  
information itself privileged or protected, will enable other parties to  
6 assess the claim.

7 “A privilege log should contain the following information: (1) the identity and  
8 position of its author; (2) the identity and position of the recipient(s); (3) the date it  
9 was prepared or written; (4) the title and description of the document; (5) the subject  
10 matter addressed; (6) the purposes for which it was prepared or communicated; (7)  
11 the document’s present location; and (8) the specific privilege or other reason it is  
12 being withheld.” *Mancini v. Ins. Corp.*, 2009 U.S. Dist. LEXIS 51321, \*10 (S.D. Cal.  
13 2009). When asserting the attorney-client privilege, “[t]he party asserting the  
14 privilege bears the initial burden of demonstrating that the communication falls  
15 within the privilege.” *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620 (C.D. Cal. 2007).

16 Here Nelson asserts the attorney-client privilege and attorney work product  
17 protection to Interrogatory No. 14. The objection is stated simply as “seek[ing]  
18 information subject to the attorney-client privilege or the attorney work product  
19 doctrine.” Such a blanket assertion of the attorney-client privilege or work product  
20 doctrine is insufficient to enable the propounding party to assess the applicability of  
21 the privilege or protection to the specific facts of the interrogatory in question.  
22 Further, Nelson has failed to produce a privilege log containing any of the above-  
23 described information as required by Federal Rule of Civil Procedure 26(b)(5).  
24 (Weaver Dec. ¶13). Consequently, the privilege claims cannot be properly evaluated.

25 Nelson also objects to Interrogatory No. 14 on relevancy grounds, arguing  
26 “there is no legitimate basis to ask for this information.” Nelson is wrong. Nelson’s  
27 compensation agreements with other creditors evidences Nelson’s incentive structure,  
28 reveals how Nelson prioritizes its efforts against certain debtors, and further explains



1 the extent of Nelson's debt collection activities. Since Nelson's debt collection  
 2 practices are directly at issue here, this Interrogatory is within the scope of the  
 3 Federal Rules of Civil Procedure.

4 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
 5 supplemental response to Interrogatory No. 14 without the stated objections and  
 6 provide a substantive response.

7 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 8 **TO INTERROGATORY NO. 14:**

9 There is no basis for compelling Defendant to identify all the details of the  
 10 agreements it has with other creditors that have retained Defendant to collect debts.  
 11 Tourgeman apparently seeks this information so that he can take further discovery  
 12 from Defendant's other clients in the hopes that this disruption to Defendant's  
 13 business relationships will coerce a settlement. This is a wholly improper abuse of  
 14 the discovery process.

15 Tourgeman claims that Defendants sued him for a debt that had already been  
 16 paid "in full" to Dell, and that Defendants filed suit against him in the wrong judicial  
 17 district. He has not and cannot allege that this conduct occurred because of some  
 18 difference in the compensation structure provided by Collins and that provided by  
 19 some other client. His request will not lead to discoverable information. There is no  
 20 basis for compelling a further response.

21  
 22 **INTERROGATORY NO. 16:**

23 Please identify the number of demand letters NELSON sent to alleged debtors  
 24 from July 2006 to the present.

25 **RESPONSE TO INTERROGATORY NO. 16:**

26 Defendant also objects to this Interrogatory on the grounds that it is overbroad,  
 27 unduly burdensome and oppressive, and to the extent that it seeks information which  
 28 is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead

1 to the discovery of admissible evidence. This case does not challenge the contents of  
 2 any demand letter sent by Nelson & Kennard. Further, Defendant does not concede  
 3 that Plaintiff may pursue this action as a purported class action nor does Defendant  
 4 concede that, even if class treatment were appropriate, that a class action is proper  
 5 here, or that Plaintiff is a proper class representative with standing to pursue claims  
 6 on behalf of a purported class. At best, the Interrogatory is premature.

7 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16:**

8 Defendant also objects to this Interrogatory on the grounds that it is overbroad,  
 9 unduly burdensome and oppressive, and to the extent that it seeks information which  
 10 is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead  
 11 to the discovery of admissible evidence. This case does not challenge the contents of  
 12 any demand letter sent by Nelson & Kennard, nor does Plaintiff seek to certify a class  
 13 of debtors who received letters. There is no basis for demanding that the firm  
 14 disclose how many letters were sent. Defendant does not concede that Plaintiff may  
 15 pursue this action as a purported class action nor does Defendant concede that, even  
 16 if class treatment were appropriate, that a class action is proper here, or that Plaintiff  
 17 is a proper class representative with standing to pursue claims on behalf of a  
 18 purported class. At best, the Interrogatory is premature.

19 Subject to and without waiving the foregoing and the General Objections,  
 20 Defendant responds as follows: From July 2006 to the present, Defendant sent  
 21 letters to more than forty debtors in an attempt to collect a debt.

22 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO SPECIAL**  
 23 **INTERROGATORY 16:**

24 Federal Rule of Civil Procedure 33 governs the use of Interrogatories during  
 25 discovery. Rule 33(b)(3) requires that "[e]ach interrogatory must, to the extent it is  
 26 not objected to, be answered separately and fully in writing under oath." Further, all  
 27 grounds for objection to an interrogatory must be stated "with specificity." Fed. R.  
 28 Civ. P. 33(b)(4).

1 Nelson objects to Interrogatory No. 16 on the basis that is “overbroad, unduly  
2 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,  
3 nor reasonably calculated to lead to the discovery of admissible evidence.” Although  
4 Nelson appears to argue the merits of the case in its discovery, Nelson has failed to  
5 demonstrate how this Interrogatory is overbroad, unduly burdensome and oppressive.  
6 *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9<sup>th</sup> cir. 1975) (those opposing  
7 discovery are “required to carry a heavy burden of showing” why discovery should be  
8 denied).

9 In September 2009, this court rejected Nelson’s argument that discovery related  
10 to “class issues” was premature until the class was certified. Nelson claims in its  
11 supplemental responses that Interrogatory No. 16 is premature because Tourgeman  
12 may not pursue this case as a class action. Nelson’s claims are inappropriate,  
13 especially since Nelson provided the supplemental responses on January 26, 2010,  
14 nearly four months after this court rejected Nelson’s contention.

15 Further, Nelson continues to ignore the allegations in the Complaint. The  
16 Complaint contains class allegations that Nelson engages in improper debt collection  
17 activities. Indeed, The complaint includes class allegations and a class comprised of:

18 All consumers residing in the United States and abroad who, during the  
19 period within one year of the date of the filing of the complaint, were  
20 contacted or sued in the United States by either Collins Financial or Nelson  
& Kennard in an effort to collect an alleged debt.

21 Further, the Complaint contains numerous allegations that Nelson improperly  
22 initiates collections and unlawfully files lawsuits against debtors. In particular, the  
23 Complaint explicitly alleges that Nelson “fails to take the time and effort to verify the  
24 alleged debts or ensure that the lawsuits it files are legitimate and accurate.” ¶32. The  
25 Complaint also specifies that Nelson “attempts to quickly obtain default judgments  
26 against consumers without having original or copies of original agreements to prove  
27 the existence, terms, and amount of the debt, and in many cases without having  
28 proper information regarding the location of the debtor, thus obtaining default  
judgments without effectuating proper service.” ¶32. The Complaint also notes that

1 “Nelson & Kennard rely on affidavits signed by individuals who the collection law  
 2 firms know have no knowledge of the underlying facts and file verified complaints in  
 3 which they attest to the truthfulness and accuracy of the information regarding the  
 4 alleged debt.” ¶35. In other words, regardless of whether the alleged creditor is  
 5 Collins or the alleged debtor is Tourgeman, Nelson does not verify information  
 6 before it initiates collections and files lawsuits. As such, Nelson’s entire debt  
 7 collection practices are at issue.

8 The information sought in this Request establishes the number of class  
 9 members and shows the scope of Nelson’s debt collection activities. Originally,  
 10 Nelson outright refused to answer Interrogatory No. 16. Now, Nelson’s supplemental  
 11 response fails to specify an exact number, merely stating the answer is “more than  
 12 forty.” Under Federal Rule 37, an “evasive or incomplete disclosure, answer, or  
 13 response” is equivalent to “a failure to disclose, answer, or respond.” Fed. R. Civ. P.  
 14 37(a)(3).

15 Lastly, Interrogatory No. 16 is narrowly tailored as it seeks the *number* of  
 16 demand letters Nelson sent to alleged debtors from July 2006 to the present. The  
 17 interrogatory does not require Nelson to engage in burdensome data gathering of  
 18 personal contact information. Rather, the Interrogatory merely seeks a *number*.

19 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
 20 supplemental response to Interrogatory No. 16 without the stated objections and  
 21 provide a substantive response.

22 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
 23 **TO INTERROGATORY NO. 16:**

24 There is no basis for compelling a further response to this request because the  
 25 number of debtors that Nelson & Kennard sent demand letters to during a four-year  
 26 period is not relevant to any claim at issue, nor likely to lead to the discovery of  
 27 admissible evidence. Tourgeman claims that Defendants sued him for a debt that had  
 28 already been paid “in full” to Dell, and that Defendants filed suit against him in the

wrong judicial district. He has not alleged that any letters that he received from the firm violated the FDCPA or state law. In fact, he claims he never received any letter from the firm.

Tourgeman suggests this request is proper because he seeks to represent a purported FDCPA class of all persons who were “contacted or sued” by Defendants, and therefore “all” of Defendants’ collection practices are at issue. He is wrong. The FDCPA does not prohibit collectors from contacting consumers, nor does it bar collectors from filing suits. Rather, the Act prohibits collectors from engaging in a specific set of unlawful collection practices. *See* 15 U.S.C. §§ 1692b-1692j. In fact, the Ninth Circuit has repeatedly recognized the Act was passed to protect consumers from serious threats, harassment, abuse and other deceptive practices utilized by unscrupulous collectors. *See* 15 U.S.C. § 1692; *Pressley v. Capital Credit and Collection*, 760 F.2d 922, 925 (9th Cir. 1985) (purpose of Act “is to protect consumers from a host of unfair, harassing, and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors”) (citation omitted). It is not a wholesale ban on any type of contact with a debtor, nor does it prohibit collectors from filing suit. The focus of the Act is prevention of deceptive and intimidating conduct by collectors that would “seriously disrupt a debtor’s life”:

The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors from abuse, harassment and deceptive collection practices. . . . Congress was concerned with disruptive, threatening, and dishonest tactics. The Senate Report accompanying the Act cites practices such as ‘threats of violence, telephone calls at unreasonable hours [and] misrepresentation of consumer’s legal rights.’ (Citation). **In other words, Congress seems to have contemplated the type of actions that would intimidate unsophisticated individuals and which, in the words of the Seventh Circuit, ‘would likely disrupt a debtor’s life.’** (Citation).

*Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938-39 (9th Cir. 2007) (emphasis added).

Tourgeman cannot seek discovery regarding every debtor “contacted or sued” by Defendants unless he identifies how the “contacts” or “suits” allegedly violated the FDCPA. In *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027 (9th Cir. 2010), the Ninth

1 Circuit held that an allegedly false and misleading statement by a collector does not  
 2 violate the FDCPA unless it is “material.” *Id.* At 1033-34. A “material”  
 3 misstatement is one that is “genuinely misleading” and that “may frustrate the  
 4 consumer’s ability to intelligently choose his or her response” to the collector’s  
 5 communication. *Id.* at 1034. The Court noted that:

6 In assessing FDCPA liability, **we are not concerned with mere technical**  
 7 **falsehoods that mislead no one**, but instead with genuinely misleading  
 8 statements that may frustrate a consumer’s ability to intelligently choose his or  
 9 her response. **Here, the statement in the Complaint did not undermine**  
 10 **Donohue’s ability to intelligently choose her action concerning her debt.**

11 *Id.* at 1034 (emphasis added).

12 Tourgeman claims that Defendants sued him for a debt that was paid “in full”  
 13 and filed suit in the wrong judicial district. He says he never received any letters  
 14 from Nelson & Kennard. He is not entitled to discovery regarding the total number of  
 15 debtors that Nelson & Kennard sent letter to during any period. It does not relate to  
 16 any of his claims and will not identify the number of class members.

17 **INTERROGATORY NO. 18:**

18 Please describe the process NELSON uses to skip trace debtors in the event of  
 19 a debtor’s address or phone number change.

20 **RESPONSE TO INTERROGATORY NO. 18:**

21 Defendant objects to this Interrogatory on the grounds that it is vague and  
 22 ambiguous.

23 Subject to and without waiving the forgoing objections or the General  
 24 Objections, Defendant responds as follows: Nelson & Kennard does not skip trace  
 25 debtors if the debtor’s address or phone number change. The firm simply enters the  
 26 new address or phone number into its account records.

27 **PLAINTIFF’S REASONS TO COMPEL RESPONSE TO SPECIAL**  
 28 **INTERROGATORY NO. 18:**

Federal Rule of Civil Procedure 33 governs the use of Interrogatories during



1 discovery. Rule 33(b)(3) requires that “[e]ach interrogatory must, to the extent it is  
2 not objected to, be answered separately and fully in writing under oath.” Further, all  
3 grounds for objection to an interrogatory must be stated “with specificity.” Fed. R.  
4 Civ. P. 33(b)(4).

5 Nelson objects to Interrogatory No. 18 on the basis that the interrogatory is  
6 “vague and ambiguous” without specifying how or why. Nelson has failed to  
7 exercise reason and common sense to attribute ordinary definitions to terms and  
8 phrases utilized in discovery. *Santa Row Hotel Partners, L.P. v. Zurich Am. Ins. Co.*,  
9 2007 U.S. Dist. LEXIS 31688 (N.D. Cal 2007). Skip tracing is a process frequently  
10 utilized by debt collectors to locate debtors. Nelson admits in its supplemental  
11 response to Interrogatory No. 7 that it skip traces these debtors. Thus, Nelson is  
12 familiar with the terminology and the process.

13 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
14 supplemental response to Interrogatory No. 18 without the stated objections and  
15 provide a substantive response.

16 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
17 **TO INTERROGATORY NO. 18:**

18 Defendant has already provided a response to this request and there is no basis  
19 for compelling a further response. Tourgeman apparently does not understand what  
20 is involved in the skip tracing process. If a debtor’s phone number or address  
21 changes, there is no need to engage in any skip tracing efforts. Rather, as stated in  
22 Defendant’s response, Defendant simply updates its system to reflect the new address  
23 or number.

24  
25 **INTERROGATORY NO. 19:**

26 Please describe the position at NELSON that prepares the affidavit authorizing  
27 legal action against an alleged debtor, including but not limited to the position’s  
28

1 duties, responsibilities, job requirements, and the number of people who perform this  
2 task for NELSON.

3 **RESPONSE TO INTERROGATORY NO. 19:**

4 Defendant objects to this Interrogatory on the grounds that it is vague and  
5 ambiguous generally and as to the phrase “the position at NELSON that prepares the  
6 affidavit authorizing legal action.”

7 Subject to and without waiving the forgoing objections or the General  
8 Objections, Defendant responds as follows: there is no such affidavit or position at  
9 Nelson & Kennard as described in this interrogatory.

10 **PLAINTIFF’S REASONS TO COMPEL RESPONSE TO SPECIAL**  
11 **INTERROGATORY NO. 19:**

12 Federal Rule of Civil Procedure 33 governs the use of Interrogatories during  
13 discovery. Rule 33(b)(3) requires that “[e]ach interrogatory must, to the extent it is  
14 not objected to, be answered separately and fully in writing under oath.” Further, all  
15 grounds for objection to an interrogatory must be stated “with specificity.” Fed. R.  
16 Civ. P. 33(b)(4).

17 Nelson objects to Interrogatory No. 19 on the basis that the term “the position  
18 at NELSON that prepares the affidavits authorizing legal action” is vague and  
19 ambiguous. Nelson has failed to exercise reason and common sense to attribute  
20 ordinary definitions to terms and phrases utilized in discovery. *Santa Row Hotel*  
21 *Partners, L.P. v. Zurich Am. Ins. Co.*, 2007 U.S. Dist. LEXIS 31688 (N.D. Cal 2007).

22 Accordingly, Tourgeman requests that this Court order Nelson to provide a  
23 supplemental response to Interrogatory No. 19 without the stated objections and  
24 provide a substantive response.

25 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**  
26 **TO INTERROGATORY NO. 19:**

27 Defendant has already provided a response to this interrogatory. There is no  
28 person at the firm who prepares an affidavit authorizing legal action, so there is no

1 person or duties to identify. Defendant cannot describe something that does not exist.  
2 It is frivolous for Tourgeman to compel a further response when a complete response  
3 has been given.  
4

5 DATED: March 15, 2010

SIMMONDS & NARITA LLP  
TOMIO B. NARITA

6  
7 By: s/Tomio B. Narita

8 Tomio B. Narita  
9 Attorneys for Defendants  
10 Collins Financial Services, Inc. and  
11 Nelson & Kennard  
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**PROOF OF SERVICE**

I, Tomio B. Narita, hereby certify that:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is 44 Montgomery Street, Suite 3010, San Francisco, California 94104-4816. I am counsel of record for the defendants in this action.

On March 15, 2010, I caused **DEFENDANTS' SEPARATE STATEMENT IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSE BY NELSON & KENNARD TO REQUESTS FOR PRODUCTION AND INTERROGATORIES** to be served upon the parties listed below via the Court's Electronic Filing System:

**VIA ECF**

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Counsel for defendants Dell Financial Services, L.L.C., and  
CIT Financial USA, Inc.

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1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed at San Francisco, California on this 15th day of March, 2010.

3  
4 By: s/Tomio B. Narita  
5 Tomio B. Narita  
6 Attorneys for Defendants  
7 Collins Financial Services, Inc. and  
8 Nelson & Kennard  
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